

SCHEDULING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the East Altamont Energy)	01-AFC-4
Center)	
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

FRIDAY, MAY 10, 2002

10:10 a.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

HEARING OFFICER AND ADVISORS PRESENT

Major William, Jr., Hearing Officer

Michael Smith, Advisor

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Cheri Davis, Project Manager

Gary Walker

Jim Buntin
Buntin Associates

PUBLIC ADVISER

Grace Bos

APPLICANT

Greggory L. Wheatland, Attorney
Ellison, Schneider and Harris

Kris Helm, Consultant
Alicia Torre, Manager, Project Development
Calpine Corporation

Susan Strachan, Project Manager
Strachan Consulting

Gary Rubenstein
Sierra Research

Rob Greene, Manager, Environmental Planning
URS

INTERVENORS

Robert Sarvey

ALSO PRESENT

Kirk Sornborger
Western Area Power Administration

Rick Gilmore, General Manager
Sandra K. Dunn, Attorney
Somach, Simmons & Dunn
Byron Bethany Irrigation District

Dan Flory, Office Chief
Department of Water Resources

Jim Swaney, Permit Services Manager
San Joaquin Valley Unified Air Pollution Control
District

Mike Boyd
Californians for Renewable Energy

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I N D E X

	Page
Proceedings	1
Opening Remarks	1
Introductions	1
Overview	3
Topic Position Presentations	5
Air Quality	5
Applicant	5
CEC Staff	6
Questions by Committee	6,16
San Joaquin Valley Unified Air Pollution Control District	16
Visual Impacts	10
Applicant	10
CEC Staff	11/19
Questions by Committee	20
Biological Resources	37
Western Area Power Administration	38
Applicant	39
CEC Staff	40
Questions/Discussion	41
Noise	44
Applicant	44
CEC Staff	46
Questions/Discussion	47
Transmission System Engineering	63
Applicant	63
CEC Staff	63

I N D E X

	Page
Topic Position Presentations - continued	
Water Supply	64
Applicant	64
CEC Staff	64
Department of Water Resources	64
Intervenor Robert Sarvey	65
Byron Bethany Irrigation District	68
Recycled Water	69
Byron Bethany Irrigation District	69
CEC Staff	71
Western Area Power Administration	72
Applicant	73
Schedule	76
CEC Staff	76
Western Area Power Administration	78
Questions/Discussion	78
Applicant	84
Biological Opinion	108
Californians for Renewable Energy	108
Questions/Discussion	109
Final Comments	111
Californians for Renewable Energy	111
Intervenor Robert Sarvey	112
Adjournment	115
Reporter's Certificate	116

P R O C E E D I N G S

10:10 a.m.

PRESIDING MEMBER KEESE: Good morning.

This is a Committee scheduling conference by Committee of the California Energy Commission on the proposed East Altamont Energy Center.

I'm Bill Keese, Chairman of the Commission and Presiding Member. My Advisor, Mike Smith, is to my right. Major Williams is our Hearing Officer to our left.

Commissioner Pernell will not be able to join us. His Advisor, Ellie Townsend-Smith, may be joining us later.

Do we have a representative of the Public Adviser's Office present?

MS. BOS: Grace Bos.

PRESIDING MEMBER KEESE: Grace. And has a handout available for distribution out in the foyer. Anyone has any questions about the process here today, and the purpose of the status conference, I urge you to see Grace. Pose your questions to her.

Now, let us go down the list of the parties and participants. State your name for the record, and whether you need a copy of the

1 convening notice.

2 Mr. Wheatland for the applicant.

3 MR. WHEATLAND: Yes, good morning. I'm
4 Gregg Wheatland, attorney for the applicant.
5 Seems like I was just here. And glad to be back
6 again this morning.

7 With me at the table this morning is
8 Susan Strachan, our Environmental Project Manager.

9 PRESIDING MEMBER KEESE: Good morning.
10 Ms. Davis for staff.

11 MS. DAVIS: My name is Cheri Davis; I'm
12 the Project Manager for the Energy Commission's
13 review of the East Altamont Energy Center AFC. To
14 my right is Lisa DeCarlo; she's Staff Counsel for
15 this project.

16 PRESIDING MEMBER KEESE: And for
17 Western?

18 MR. SORNBORGER: Kirk Sornborger from
19 Western Area Power Administration.

20 PRESIDING MEMBER KEESE: Thank you. The
21 Bay Area Air Quality Management District, whoever
22 their representative is.

23 Do we have anybody coming in on the
24 phone?

25 MS. DAVIS: No.

1 PRESIDING MEMBER KEESE: Okay, thank
2 you. San Joaquin Valley Unified Air Pollution
3 Control District. Department of Water Resources.
4 Byron Bethany Irrigation District.

5 MR. GILMORE: Rick Gilmore, General
6 Manager, Byron Bethany Irrigation District. And
7 Sandra Dunn, Special Counsel.

8 PRESIDING MEMBER KEESE: Do we have any
9 other participating agencies who wish to be
10 recognized at this time?

11 We have organizational intervenors.
12 CURE. San Joaquin Valley Unified Air Pollution
13 Control District. We have Mr. Robert Sarvey.

14 MS. BOS: He was going to be here. I
15 don't see him.

16 PRESIDING MEMBER KEESE: He's not
17 present at the present time. Any other member of
18 the public who wishes to be recognized at this
19 time?

20 Okay, thank you. Major, take over the
21 agenda.

22 HEARING OFFICER WILLIAMS: Thank you,
23 Mr. Chairman. Good morning. For purposes of our
24 discussion today the Committee's agenda will be
25 taken from our April 30th session -- provide

1 schedule order.

2 In addition, staff and applicant have
3 recently filed staff's report number five, which
4 we will discuss.

5 At the end of each section of our
6 discussion we will take any comments or questions
7 from the participating agencies and intervenors.
8 During the course of our discussions under each
9 section there will be issues concerning the
10 Committee's issuance of a new schedule for this
11 project. We will take up scheduling issues as
12 they arise. After that the Committee then will
13 entertain questions from the public.

14 Okay, there was a request from the
15 applicant, I believe there has been some agreement
16 that we take a section out of order.

17 MR. WHEATLAND: Yes, if we could take
18 the visual resource issue after the air quality,
19 please, our staff in that area have a scheduling
20 conflict this morning. And also one of the visual
21 resource issues is related to air quality, so we
22 thought it might be better if it follow directly
23 after.

24 HEARING OFFICER WILLIAMS: Okay. That's
25 fine. We'll do that. Okay, if are you prepared

1 to proceed we will move right into air quality.

2 MR. WHEATLAND: All right. What would
3 you like us to do?

4 HEARING OFFICER WILLIAMS: Well, I think
5 probably the first item of business will be the
6 status of the final determination of compliance.
7 And where we stand on that issue.

8 MR. WHEATLAND: All right. Gary, would
9 you come up.

10 MR. RUBENSTEIN: Gary Rubenstein with
11 Sierra Research on behalf of --

12 PRESIDING MEMBER KEESE: I'm not sure,
13 is this amplifying?

14 (Off-the-record discussion.)

15 MR. RUBENSTEIN: Gary Rubenstein from
16 Sierra Research on behalf of the applicant. While
17 I've long ago given up predicting when PDOCs and
18 FDOCs will be issued, the comment period on the
19 PDOC ends early next week. And I would anticipate
20 that the FDOC would be issued not more than 30
21 days after the close of the comment period, which
22 would put that sometime in the first or second
23 week of June.

24 HEARING OFFICER WILLIAMS: I believe,
25 Mr. Wheatland, in your status report you indicated

1 the end of May.

2 MR. WHEATLAND: Yes. As Gary says,
3 typically they come out 15 to 30 days after the
4 close of the public comment period. And so the
5 May 28th date that was indicated on our status
6 report, I also believe in the staff's status
7 report, the date we had provided was May 28th.

8 HEARING OFFICER WILLIAMS: So that's not
9 accurate.

10 MR. WHEATLAND: No, I would say that's
11 optimistic.

12 MR. RUBENSTEIN: That's the early end of
13 the range. I think that's an accurate estimate of
14 the early end of the range, and I've given you the
15 back end of the range.

16 MS. DeCARLO: And actually staff doesn't
17 have any independent verification of the date,
18 either. We relied on the applicant's date in the
19 standard conservative, or not conservative but
20 optimistic date for that.

21 PRESIDING MEMBER KEESE: So, we're going
22 to have to deal with this later, so the comment
23 period ends next week?

24 MR. RUBENSTEIN: It's the 17th.

25 PRESIDING MEMBER KEESE: 17th.

1 MR. RUBENSTEIN: So that would be, I
2 guess, next Friday.

3 MR. WHEATLAND: And that date was
4 extended slightly from when we first estimated May
5 28th, we had assumed that the comment period would
6 begin when the PDOC was issued, but there was a
7 lag at the District between the issuance of the
8 PDOC and the commencement of the comment period.
9 So that accounts for those few additional days.

10 PRESIDING MEMBER KEESE: Okay, that's
11 fine.

12 HEARING OFFICER WILLIAMS: Staff, you
13 had -- in your status report you indicated that
14 there was an issue with respect to BACT. Will
15 that be resolved in the FDOC? Is that how it
16 works? I'm not sure how this issue will be --

17 MS. DAVIS: If the Environmental
18 Protection Agency files comments on the PDOC we're
19 hoping it would address that issue.

20 HEARING OFFICER WILLIAMS: And staff is
21 indeed recommending that --

22 MS. DAVIS: Yes. We've received
23 comments on -- EPA filed comments on Morro Bay and
24 also on another project not in the CEC process
25 stating that BACT were at the levels that we have

1 set forth.

2 Therefore, we anticipate EPA filing
3 comments similar to those on this case, as well.

4 HEARING OFFICER WILLIAMS: Applicant, if
5 EPA indeed recommends the lower BACT levels are
6 you prepared to meet those?

7 MR. RUBENSTEIN: I've reviewed the
8 letters that I believe staff is referring to.
9 This project is designed to meet those lower
10 levels; however we are not proposing them, and
11 we're uncomfortable with them because of real
12 world field experience.

13 So our emission rates won't change
14 significantly, if at all, if those BACT levels are
15 imposed, but the risk of compliance will go up.

16 In terms of the issue at hand, which is
17 the schedule, I don't believe this issue would
18 affect the schedule at all because it's a matter
19 of the Bay Area District picking one number or
20 another number, and that won't take very much
21 time. So the time estimate I've provided I think
22 is still realistic regardless of how the BACT
23 issue is resolved.

24 PRESIDING MEMBER KEESE: And has the Bay
25 Area District in a case picked the lower numbers?

1 MS. DeCARLO: Not to my understanding,
2 and they haven't done so in their PDOC, either, so
3 we're awaiting EPA comments.

4 PRESIDING MEMBER KEESE: Okay, and those
5 issues have been pending for some time, but --

6 HEARING OFFICER WILLIAMS: Is staff
7 satisfied that the applicant has provided the
8 appropriate emission reduction credits? Has that
9 issue been addressed?

10 MS. DAVIS: No, staff has not. And as
11 we indicated in our status report, staff is
12 looking into ways that the applicant might be able
13 to mitigate local PM10 impacts. I mean we'd like
14 to discuss these issues with the applicant in a
15 workshop setting. We intend to at least set aside
16 May 22nd as the date for that workshop.

17 If that's what we decide to do we'll be
18 getting the workshop notice up to you for your
19 signature today.

20 HEARING OFFICER WILLIAMS: Are you
21 prepared to -- that that is a satisfactory date
22 for a workshop?

23 MR. WHEATLAND: Yes, we've been prepared
24 to meet with the staff at any time to discuss
25 these issues and we would certainly be happy to

1 discuss this issue with them on May 22nd.

2 PRESIDING MEMBER KEESE: Sounds like
3 it's a go.

4 HEARING OFFICER WILLIAMS: Staff, what
5 was the outcome, if any, on the cumulative impact
6 analysis? How was that issue dealt with?

7 MS. DAVIS: Staff is completing their
8 cumulative impact analysis now.

9 HEARING OFFICER WILLIAMS: Okay, I think
10 that's all we have on air quality.

11 On visual, I guess --

12 (Alarm.)

13 HEARING OFFICER WILLIAMS: Somebody
14 probably didn't use their key card. They will be
15 immediately jailed.

16 (Laughter.)

17 HEARING OFFICER WILLIAMS: Mitigation
18 plan. Mitigation plan for visual resources. I
19 believe that's one of the issues?

20 MR. WHEATLAND: Yes, as we set out for
21 you in our status report, when the applicant filed
22 its original landscape mitigation plan there were
23 some concerns raised principally by the biologists
24 regarding the nature and the placement of the
25 trees and shrubbery on the site.

1 We listened carefully to what was being
2 said to us, and we prepared a revised mitigation
3 plan that was designed to and intended, both to
4 meet the concerns of the biologists, as well as
5 provide effective screening of the facility for
6 the purposes of the visual impacts.

7 And we submitted, after considerable
8 discussion with all the affected parties, we
9 submitted a revised plan to the staff, I believe
10 it was in the beginning of April. And so that's
11 where it stands at this time.

12 HEARING OFFICER WILLIAMS: Staff, have
13 you had a chance to review it?

14 MS. DAVIS: Yes. I would like to start
15 off by saying that we really appreciate the
16 applicant's willingness to try to work through
17 these issues. It's been very difficult to balance
18 the competing interests of biological resources
19 and visual resources on this project.

20 The applicant's latest landscaping plan
21 moves the trees in closer to the plant and further
22 from the roads and the line of sight. And in
23 doing so it really does nothing to address the
24 potential significant impacts that staff
25 identified in the PSA.

1 Staff proposes to try one more time to
2 try to work out a compromise solution with the
3 biological resources side of things. We'd like to
4 meet with U.S. Fish and Wildlife Service and
5 California Department of Fish and Game --

6 HEARING OFFICER WILLIAMS: Excuse me, I
7 hate to interrupt you, but apparently there's a
8 problem with the phone lines that we need to work
9 out.

10 MS. DAVIS: Oh, okay.

11 HEARING OFFICER WILLIAMS: So, I propose
12 that we --

13 PRESIDING MEMBER KEESE: Do we have
14 somebody on the phone?

15 SPEAKER: There's one person who's
16 trying to get on right now.

17 PRESIDING MEMBER KEESE: We'll proceed,
18 go ahead.

19 HEARING OFFICER WILLIAMS: Sorry.

20 PRESIDING MEMBER KEESE: Just let us
21 know when you have him.

22 MS. DAVIS: Okay, what was I saying?

23 (Pause.)

24 PRESIDING MEMBER KEESE: Thank you. Mr.
25 Swaney?

1 MR. SWANEY: Yes.

2 PRESIDING MEMBER KEESE: Just
3 acknowledging that you are on the phone with us.
4 Thank you.

5 And Mr. Sarvey has joined us.

6 Thank you, we will continue. We have
7 handled the issue of air quality and we are
8 dealing with visual.

9 HEARING OFFICER WILLIAMS: Mr. Swaney?

10 MR. SWANEY: Yes.

11 HEARING OFFICER WILLIAMS: This is Major
12 Williams, the Hearing Officer. We actually went
13 through air quality as the first topic. Excuse
14 me, are you there?

15 MR. SWANEY: Yeah, I'm here.

16 HEARING OFFICER WILLIAMS: Did you have
17 anything that you wanted to add to that topic? We
18 sort of talked about a May 22nd workshop that
19 staff is proposing to conduct on air quality
20 issues. And we talked a little bit about the
21 range of dates for the expected release of the
22 FDOC.

23 So that's essentially what we talked
24 about. And we're now into visual resources.

25 MR. BOYD: Okay. Other than that all I

1 would say is that I'd need two weeks to digest and
2 act on -- that's what I was looking for.

3 HEARING OFFICER WILLIAMS: Two weeks
4 to --

5 PRESIDING MEMBER KEESE: Two weeks to
6 digest the FDOC when it comes out?

7 MR. BOYD: Yeah, (inaudible) I don't
8 think two weeks is unreasonable.

9 PRESIDING MEMBER KEESE: No, we're
10 clarifying what you're saying. We have a rather
11 poor connection here.

12 MR. BOYD: Oh, I'm sorry.

13 HEARING OFFICER WILLIAMS: Okay. I
14 assume you're anticipating filing written comments
15 on it?

16 MR. BOYD: Yes, --

17 HEARING OFFICER WILLIAMS: Okay.

18 MR. SWANEY: To be clear I believe
19 that's Mr. Sarvey speaking, not Mr. Swaney.

20 PRESIDING MEMBER KEESE: Mr. Sarvey is
21 with us.

22 MR. SWANEY: Oh, I'm sorry.

23 HEARING OFFICER WILLIAMS: Well, who was
24 that?

25 MR. BOYD: This is Mike Boyd, President

1 of CARE.

2 HEARING OFFICER WILLIAMS: Were you the
3 one that just made the comment about Mr. Swaney,
4 Mr. Boyd?

5 MR. BOYD: (Inaudible.)

6 HEARING OFFICER WILLIAMS: Excuse me, I
7 can't hear you. Maybe you can get closer to the
8 phone?

9 MR. BOYD: Okay, (inaudible) --

10 HEARING OFFICER WILLIAMS: Okay, before
11 you speak could you indicate who you are so we
12 know.

13 PRESIDING MEMBER KEESE: In the future.
14 We thought we had Mr. Swaney responding.

15 MR. BOYD: Oh, okay, I apologize. I
16 thought you were speaking to me. This is Mike
17 Boyd, and I guess I spoke out of turn.

18 PRESIDING MEMBER KEESE: Understand.
19 This is Bill Keese, Mr. Boyd.

20 Okay, let's try again for Mr. Swaney.
21 As you've heard, we're at the comment period that
22 ends on the 17th, and we're expecting the --
23 hoping for the PDOC some time mid-month or early
24 in the month.

25 And staff has scheduled a workshop on

1 offsets essentially on the 22nd. Staff and
2 applicant have agreed to that date.

3 MR. SWANEY: We will be filing written
4 comments on the preliminary DOC and we'll have
5 them in mid next week to the Bay Area, and the
6 Energy Commission.

7 And at this point all I would like to
8 say is that we still have great concerns over the
9 emissions and how they will impact the San Joaquin
10 Valley. And to this date the applicant has not
11 been working with us. And not been entering into
12 discussions with us on our concerns.

13 And we feel that with that, unless the
14 applicant discusses with us --

15 PRESIDING MEMBER KEESE: Mr. Swaney?

16 MR. SWANEY: Yes.

17 PRESIDING MEMBER KEESE: I think we
18 missed your last statement after you indicated the
19 applicant hasn't worked with you. Did you have
20 anything else to say after that?

21 MR. SWANEY: No.

22 PRESIDING MEMBER KEESE: Okay. Are you
23 going to be able to participate in the workshop on
24 the 22nd? Mr. Swaney?

25 MR. SWANEY: Yes, I will be there.

1 PRESIDING MEMBER KEESE: Thank you. And
2 the applicant will be there and staff will be
3 there. I would suggest that's a good time for the
4 parties to discuss working together.

5 Anything else to add? Any party have
6 anything else to add?

7 MR. WHEATLAND: Yes.

8 PRESIDING MEMBER KEESE: Mr. Rubenstein.

9 MR. RUBENSTEIN: Mr. Chairman, Major
10 Williams, I did want to respond to Mr. Swaney's
11 comment about not working with the District.

12 We have been asking the District since
13 early January for a formulation that they have
14 presented to another project developer to evaluate
15 mitigation. And we have been attempting to get a
16 written copy of exactly what that formulation is
17 and how the San Joaquin District has been applying
18 that in the case of another project.

19 The San Joaquin District has refused to
20 provide that to us consistently, claiming that
21 document was confidential and would not be made
22 public until the document was submitted to their
23 governing board for approval.

24 It's my understanding that that's coming
25 before their governing board for approval next

1 Thursday. It should be publicly available today.
2 And we view reviewing that document as the first
3 step in having these discussions.

4 And so I just wanted to clarify that we
5 are willing to discuss these issues with the
6 District, and it looks like the most productive
7 time and place to do that will be at the workshop
8 on the 22nd.

9 PRESIDING MEMBER KEESE: Thank you. Mr.
10 Swaney, is that document going to be available
11 publicly today?

12 MR. SWANEY: I'm not sure about the
13 exact schedule, but I do know that it has been
14 proposed to be reviewed at the next --

15 PRESIDING MEMBER KEESE: And would you
16 be willing to make it available to the applicant
17 when it is publicly available?

18 MR. SWANEY: Yes, definitely.

19 PRESIDING MEMBER KEESE: Thank you.
20 That would be beneficial. And then it sounds like
21 in any event it will be discussed at the workshop
22 on the 22nd.

23 Thank you.

24 Mr. Sarvey, anything to add on to this
25 issue?

1 MR. SARVEY: Not right at the moment.

2 HEARING OFFICER WILLIAMS: Basically you
3 heard we're expecting something early to mid next
4 month.

5 MR. SARVEY: I'll wait for the workshop,
6 thank you.

7 PRESIDING MEMBER KEESE: And that there
8 will be a workshop on the 22nd. Thank you.

9 All right, let's get back to visual.
10 And staff was saying?

11 MS. DAVIS: Well, as we were saying, the
12 revised conceptual landscape plan does not address
13 the concerns that staff expressed in the
14 preliminary staff assessment. And we would like
15 to try one more time to work out a compromise
16 solution with U.S. Fish and Wildlife Service and
17 California Department of Fish and Game. And we
18 would like to meet with them as soon as possible,
19 and we will make every effort to try to address
20 this within the overall schedule.

21 MR. FLORY: Dan Flory with the
22 Department of Water Resources, just joined online.

23 HEARING OFFICER WILLIAMS: Thank you.
24 We haven't got to your issue yet.

25 Staff, you indicated in your status

1 report that you were proposing substantially new
2 conditions for visual resources, is that right?

3 The reason I raise this is that I take
4 it as a part of the mitigation plan issue; could
5 you elaborate on that a little bit? Correct me if
6 I'm wrong.

7 MS. DAVIS: As you will recall the
8 landscaping plan posed problems because of the
9 potential for raptors and other species of
10 predators for sensitive species are on the site to
11 take refuge in the trees or below the trees.

12 And so in order to address those
13 concerns the applicant moved the trees in closer
14 to the project site, which means that they are
15 shorter, when you look at the plan they're shorter
16 compared to the overall structures.

17 And so staff still has concerns about
18 the structures, themselves, when viewed from the
19 road, would pose a potential significant impact.

20 Is that what you're asking?

21 HEARING OFFICER WILLIAMS: Yeah, I think
22 so.

23 PRESIDING MEMBER KEESE: So basically
24 you're indicating here we have two environmental
25 benefits we're competing for --

1 MS. DAVIS: Yes, and we're going --

2 PRESIDING MEMBER KEESE: -- for a cure,
3 and then what's the cure for one is the bane for
4 the other?

5 MS. DAVIS: Exactly, exactly. And we
6 would like to try to meet with the agencies and
7 see if there's some kind of compromise solution
8 that can work that would be a win/win situation,
9 to try one more time.

10 PRESIDING MEMBER KEESE: Thank you.

11 HEARING OFFICER WILLIAMS: Will this
12 require a workshop, as well, or a meeting with the
13 agencies or in terms of scheduling how does that
14 work?

15 MS. DAVIS: I think we would like to
16 meet with the agencies, just an agency-to-agency
17 meeting at this time. And anything that comes out
18 of that meeting we could bring forth at the
19 workshop on the 22nd.

20 HEARING OFFICER WILLIAMS: Oh, okay, so
21 the meeting would take place before the meeting on
22 the 22nd. So you'd be able to --

23 MS. DAVIS: That's how we would like to
24 structure things.

25 HEARING OFFICER WILLIAMS: Oh, great. I

1 think that would be helpful. Do you agree?

2 MR. WHEATLAND: Well, we certainly want
3 to find a compromise on this issue. That's in
4 everyone's interests. That's indeed what we've
5 been working with the last few months.

6 The first revised landscape that we put
7 out, which was an attempt to reconcile a conflict
8 between the visual resources staff of the Energy
9 Commission Staff and the biology staff of the
10 Energy Commission Staff, we put out in November of
11 last year.

12 We held a workshop on that plan in
13 January. We listened to everyone's concerns. And
14 we then put out a revised plan in April.

15 The thing that I want to stress is that
16 it was actually on April 3rd. Today is the first
17 time that we've heard, the very first time that
18 we've heard that the staff is not satisfied with
19 that plan.

20 When the staff filed their status update
21 just last week they reported that staff is still
22 currently evaluating the revised landscaping plan,
23 and will consult with CDFG and U.S. Fish and
24 Wildlife for their input on the plan before
25 completing its final analysis.

1 So, today is the very first time, after
2 almost five or six months of discussion, that we
3 hear that the staff is not satisfied. I'd like to
4 ask just very briefly today, so it will help us
5 prepare for the 22nd, what's the nature of the
6 staff's dissatisfaction. Have we not satisfied
7 the biologist? Or have we not satisfied the
8 visual resource staff? Or is it a combination of
9 both, still?

10 MS. DAVIS: At this point it's primarily
11 visual. Our intent is to go to the biologist,
12 U.S. Fish and Wildlife, and to Fish and Game, and
13 to see if they would be amenable to moving the
14 trees out again to provide more of a visual
15 mitigation. We're trying to see if the biologist
16 has any concern over biological impacts of doing
17 that.

18 MR. WHEATLAND: I'm hearing that there's
19 some complications in moving those trees. Within
20 the constraints of the site, and the need for us
21 to have a biological mitigation plan that will
22 satisfy the reviewing agencies, we're willing to
23 have that discussion.

24 But we're just very disappointed that
25 the discussion is taking place so late in the

1 process. We want to have the discussion, we want
2 to try to find a compromise, but we also have a
3 very strong interest in not having these
4 continuing discussions delay the proceeding any
5 further.

6 MS. DAVIS: Well, we did --

7 PRESIDING MEMBER KEESE: Okay, staff has
8 indicated that they're going to try to be prepared
9 by the 22nd. So, let's give them ten days.

10 MR. WHEATLAND: We want to help.

11 PRESIDING MEMBER KEESE: Thank you.
12 Anything else on visual?

13 MR. WHEATLAND: The other issue on the
14 visual concerns the staff's request for a
15 simulation of visual plumes.

16 MS. DAVIS: Would you like me to take it
17 from there?

18 MR. WHEATLAND: Please.

19 MS. DAVIS: Okay. Staff issued data
20 requests one year ago today asking for the
21 applicant to simulate the plumes from the plume
22 towers. And the applicant objected to those data
23 requests, and their objections we hope to address
24 by reissuing the data requests using the plumes
25 that staff has now remodeled.

1 Staff has determined the potential for
2 significant impacts. And this has kind of been
3 going back and forth since May 10th with the
4 applicant modeling and remodeling the plumes;
5 coming up with new data; a few changes to the
6 input parameters. And our staff doing an
7 independent analysis.

8 Staff's independent modeling results are
9 complete, and so we're ready to go forward with
10 this data request, again reissued from one year
11 ago today. And in that data request we will be
12 providing guidance to the applicant to address the
13 questions that they raised in their objections
14 last year.

15 HEARING OFFICER WILLIAMS: In terms of
16 the schedule, how is this going to affect it?

17 MS. DAVIS: We believe that the
18 applicant can complete the modeling within two
19 weeks.

20 MR. WHEATLAND: Well, the problem --

21 MS. DAVIS: Plume simulations, I'm
22 sorry.

23 MR. WHEATLAND: We have a number of
24 problems with this, and I'm going to ask Gary to
25 address these in more detail. But the starting

1 problem is what it is that we actually model.

2 To our knowledge this hasn't been a
3 requirement in previous proceedings. We've been
4 searching to find other cases in which such a
5 request has been made, or such a request has been
6 a condition of the FSA.

7 We see a number of difficulties in
8 undertaking such an analysis, and I'd like Gary to
9 discuss those, if he could, very briefly.

10 MR. RUBENSTEIN: This issue has come up
11 in other cases that I've worked on, as Mr.
12 Wheatland has indicated, I've never seen it
13 actually pursued to the point where a simulation
14 of a plume has been done.

15 The problems are that although in
16 concept the staff has asked for the simulation of
17 a reasonable worst case plume, mathematically it's
18 very difficult to define.

19 And in another case where this issue was
20 pursued further than we've gotten so far here, the
21 ultimate definition of a reasonable worst case
22 plume was in fact a plume that physically was not
23 predicted to occur.

24 Because you have to characterize a plume
25 in terms of its height, its diameter and its

1 length, and then in addition, to do a visual
2 simulation you have to specify what direction you
3 want the wind to be blowing in, and what speed the
4 wind is blowing at.

5 And if you specify all five of those
6 parameters, if you were very lucky you will
7 specify a plume that occurs literally one hour out
8 of the year.

9 In most cases if you specify all five of
10 those parameters you will specify a plume that is
11 not predicted to occur at all.

12 And then instead of actually simulating
13 a reasonable worst case plume, you're actually
14 simulating a phantom plume. And that's where we
15 have problems with the request.

16 PRESIDING MEMBER KEESE: Does staff
17 believe they've handled this conundrum?

18 MS. DAVIS: We do. We believe this is a
19 reasonable request and we think there are some
20 very reasonable assumptions that can be made to
21 come up with a photosimulation of such a plume.

22 PRESIDING MEMBER KEESE: A non phantom
23 plume?

24 MS. DAVIS: Yes.

25 MS. DeCARLO: And we have required, or

1 asked and been presented with a plume simulation
2 in the Contra Costa case, as well, if that's a
3 help. There is precedence for this.

4 MR. RUBENSTEIN: Is that the only case?

5 MS. DeCARLO: The one that I'm aware of,
6 yes.

7 MS. DeCARLO: I'm sorry, I stand
8 corrected. Potrero and Magnolia, we've also been
9 provided with plume simulations.

10 We believe that our data request will
11 provide all the information the applicant needs,
12 all the input parameters to create that
13 simulation.

14 PRESIDING MEMBER KEESE: Thank you.

15 HEARING OFFICER WILLIAMS: I take it if
16 you're not happy with their request you'll let us
17 know?

18 MR. WHEATLAND: Yes, we certainly will.

19 MS. DAVIS: We hope that if the
20 applicant finds our data request to be vague that
21 they will ask us some questions about it so we can
22 clarify.

23 HEARING OFFICER WILLIAMS: Now, will
24 those be issued prior to the 22nd?

25 MS. DAVIS: Yes.

1 HEARING OFFICER WILLIAMS: Okay. So
2 again the workshop will provide an opportunity to
3 discuss those.

4 PRESIDING MEMBER KEESE: Does staff have
5 a definition of a bad plume going in? I mean is
6 any plume bad?

7 MS. DAVIS: I'll let our visual
8 resources staff address that.

9 MR. WALKER: Mr. Chairman, plumes are
10 normally considered to be --

11 HEARING OFFICER WILLIAMS: Excuse me,
12 sir, could you identify yourself for the record?

13 MR. WALKER: I'm Gary Walker. Sorry.

14 Staff evaluates plumes to determine
15 whether they might cause a significant impact.
16 They don't always cause a significant impact,
17 either because of their infrequency or their size
18 may be such that they're not large enough in a
19 particular setting to cause enough degradation of
20 visual quality to be considered significant.

21 In this particular case, our analysis
22 found that it would cause significant impact.
23 That's why we're pursuing this simulation to be
24 able to have a better visual understanding of
25 exactly what that impact would be.

1 PRESIDING MEMBER KEESE: Okay, and
2 visual, we're talking about -- I'm trying to
3 distinguish this. I'm familiar with a plume that
4 came down and sat on a highway and interfered with
5 traffic on the highway. A rather clear visual
6 impact there.

7 What we're talking about here is --
8 we're not talking about that here, we're talking
9 about a plume that's in the sky and can be seen?

10 MR. WALKER: Yes. We're not talking
11 about the potential traffic hazard from a plume.
12 That issue is being addressed in the traffic and
13 transportation analysis.

14 Here we're talking about aesthetics.

15 PRESIDING MEMBER KEESE: Aesthetics.

16 MR. WALKER: Yes.

17 PRESIDING MEMBER KEESE: Okay. And you
18 have a baseline standard above which you believe
19 it has to get in order to reach that threshold?

20 MR. WALKER: Yes, both in terms of
21 frequency, and then in any particular setting in
22 terms of dimensions, as well.

23 PRESIDING MEMBER KEESE: We've heard
24 density and dimension.

25 MR. WALKER: Yes.

1 PRESIDING MEMBER KEESE: Thank you.

2 MR. WHEATLAND: At this point we have
3 not received the staff's analysis which would show
4 that there would be a significant visual impact
5 based on staff's criteria of the plumes. When
6 will we receive that?

7 MS. DAVIS: Staff did provide results of
8 plume modeling on January 23rd as a supplement to
9 the preliminary staff assessment. The frequencies
10 of the plumes really haven't changed since then.
11 So that provides some guidance to the applicant.

12 Staff is revising the preliminary staff
13 assessment and those results will be presented in
14 the final staff assessment.

15 The actual dimensions of the plume will
16 be presented in the data request, itself.

17 MR. WHEATLAND: One of the objections
18 that we made in our status report to this request
19 for a visual simulation of the plume is that it
20 seemed a logical threshold question is that the
21 visibility of plumes would constitute a
22 significant adverse impact based on the staff's
23 criteria.

24 If the plumes don't even reach that
25 level of significance then it seems there would be

1 no need for a visual simulation at all.

2 And so what I'm asking is when will we
3 receive a copy of the staff's revised analysis
4 showing that, in fact, there is an adverse visual
5 impact based on the staff's criteria.

6 MS. DAVIS: I believe that the data
7 request -- the data request specifies the
8 frequency and the dimensions of the plume. Is
9 that what you're asking?

10 MR. WHEATLAND: Well, I guess --

11 MS. DAVIS: Or the full --

12 MR. WHEATLAND: -- but the question is
13 why visually simulate a plume if, in fact, the
14 plumes won't constitute a significant adverse
15 impact. In other words, if they're not -- I
16 believe that staff has suggested in the past that
17 they need to be visible at least 10 percent of the
18 visible daylight hours.

19 If the plumes would not even constitute
20 that threshold, what's the purpose of doing a
21 visual simulation?

22 MR. WALKER: It does constitute that
23 threshold, it exceeds that threshold.

24 MR. WHEATLAND: And my question is when
25 will we see the analysis that would show that.

1 MS. DAVIS: As of right now we're
2 planning on including that revised analysis as
3 part of the final staff assessment.

4 MS. DeCARLO: I think the key point here
5 is that we have internally determined that
6 prevalence of the plume and the dimensions do
7 exceed our thresholds for significant impact.

8 We've indicated there was a potential
9 for that in the preliminary staff assessment. We
10 will outline in our data request the specific
11 dimensions that we think the plume will rise to
12 which do exceed our criteria for significance.

13 And we're just requesting you to model
14 that particular plume dimension.

15 MR. WHEATLAND: Well, Mr. Rubenstein --

16 MR. WALKER: And --

17 MR. WHEATLAND: I'm sorry.

18 MR. WALKER: Excuse me. And we will
19 address all of the concerns that the applicant
20 made in its objection and his comments on the PSA.

21 MR. SMITH: If I might ask, if the
22 analysis is done and the conclusions are clear,
23 why can't this information be shared with the
24 applicant now as opposed to waiting until the FSA?

25 MR. WALKER: Well, it's preliminary and

1 will be final based upon seeing the simulation.
2 This is our best judgment at this point, but we
3 need to see the simulation to make a final
4 determination.

5 MR. SMITH: But that doesn't answer my
6 question. Why can't you share your analysis with
7 the applicant?

8 MR. WALKER: We could in a preliminary
9 sense, in a draft sense, because that's where it
10 is. It's still a draft right now.

11 PRESIDING MEMBER KEESE: That would seem
12 to be fine. The draft, to the extent if they look
13 at it and say, well, you know, you're wrong here,
14 I would imagine -- and you agreed with it -- you'd
15 make an adjustment.

16 But if you're asking them to analyze
17 something for a standard -- that's somewhat what I
18 was getting at, is there a baseline standard. It
19 seems to me, as they're doing their analysis they
20 should understand what the standard is, whether
21 it's, you know, jumps three feet or four feet or
22 five feet. And can you do that. It would be nice
23 to know how high they're supposed to be jumping.

24 MR. WALKER: Okay. In terms of
25 frequency we have established a threshold, but in

1 terms of dimensions it depends upon the particular
2 setting. And the proximity of viewers to the
3 project, for instance, and that sort of thing.
4 And other visual quality, and whether this amount
5 of change in this setting will cause a significant
6 impact.

7 And so --

8 PRESIDING MEMBER KEESE: And the
9 Committee is going to have to struggle with that
10 eventually --

11 MR. WALKER: Sure. All I'm saying is we
12 don't --

13 PRESIDING MEMBER KEESE: But you're
14 going to give us what you think are the
15 parameters.

16 MR. WALKER: All I'm saying, it's not an
17 absolute standard, like if it's 100 feet tall,
18 then that's significant. Or if it's 1000 feet
19 tall it's significant. You have to consider all
20 the factors in the situation, that's all. So it's
21 not one answer for every case.

22 PRESIDING MEMBER KEESE: I would agree.

23 MR. WALKER: Okay.

24 MR. SMITH: And I assume that these
25 criteria are known to the applicant.

1 MR. RUBENSTEIN: No, they're not, if I
2 could jump in here. We made a filing on I believe
3 it was April 3rd in which we provided a revised
4 analysis and also our comments on how to evaluate
5 the significance.

6 In that filing we indicated that a
7 number of different criteria have been used to
8 evaluate the significance of plumes in various
9 different proceedings.

10 In this particular proceeding we have
11 not seen any criteria presented. And the analysis
12 that Ms. Davis referred to that we received in
13 January was simply the technical analysis
14 regarding plume frequency and dimensions. But did
15 not attempt to discuss whether those plumes were
16 significant.

17 And in the context of what we're looking
18 for now it is precisely that. It's not just the
19 evaluation, even on a preliminary basis, of what
20 the plume frequencies and dimensions are, but also
21 what criteria the staff are using in this case to
22 determine that the impacts rise to the level of
23 significance.

24 PRESIDING MEMBER KEESE: It would be
25 good if staff could give it, and with the caveat

1 that this is provisional, draft, tentative.

2 MR. WALKER: We can do that. It wasn't
3 done in the preliminary staff assessment because
4 we didn't have the modeling finished and we
5 couldn't come to any conclusion because we didn't
6 even know the numbers, the sizes we were dealing
7 with to be able to say in this setting whether
8 that constituted a significant impact or not.

9 So, it would have been misleading, at
10 best, to provide it to the applicant at that
11 point.

12 PRESIDING MEMBER KEESE: Okay, well, I
13 think you're going to get something.

14 MS. DAVIS: In our status report we do
15 talk about the fact that we would like to be able
16 to cover other topics in this workshop because
17 there is new information. And visual resources
18 was listed as one of those topics.

19 PRESIDING MEMBER KEESE: Okay. A few
20 days before May 22nd, hopefully.

21 All right, does that take care of
22 visual? Biology, we can go back to biological
23 resources then.

24 HEARING OFFICER WILLIAMS: I think maybe
25 Western needs to weigh in here on the biological

1 resources topic. I think you're involved somewhat
2 in the mitigation plan. There was a consultation,
3 I take it?

4 MR. SORNBORGER: Western's involved with
5 the -- we submitted a biological assessment. I
6 wish I had that date in front of me, I do not.

7 We submitted the biological assessment
8 to the U.S. Fish and Wildlife Service. I spoke to
9 the U.S. Fish and Wildlife Service concerning the
10 biological opinion; and at this time they don't
11 see any problems with what's submitted. And they
12 see the issuance date as not being a problem.

13 I don't have a date unfortunately; I
14 just know that there's no problem with the date.

15 PRESIDING MEMBER KEESE: I think I heard
16 you --

17 MR. SORNBORGER: Yes. Wait, wait, there
18 is a caveat there, thank you. That is pending
19 this mitigation, the mitigation plan that we're
20 talking about that we'll get to today. They would
21 like to see that in the biological opinion. Does
22 that make sense?

23 PRESIDING MEMBER KEESE: And that was
24 your landscaping? Is that what we're referring
25 to? Or a different mitigation plan?

1 MR. SORNBORGER: Actually what this
2 mitigation plan that we're talking about is an
3 area to be set aside as a mitigation area. Susan,
4 would you like --

5 MS. STRACHAN: I'd be happy to. If I
6 could just explain. This is Susan Strachan. Just
7 a little bit of history. When we started meeting
8 with the agencies, Fish and Game, Fish and
9 Wildlife Service a year ago about mitigation for
10 biological impacts associated with the project,
11 they told us they wanted land, and they wanted
12 land near the site.

13 So since that time we've been doing
14 exactly that. The problem is that finding land,
15 finding a willing seller, and then having it be
16 agreed upon by three different agencies is an
17 arduous task.

18 Nevertheless, we're making progress.
19 We've had some productive meetings with the
20 agencies. In fact, we met with them even as
21 recently as Wednesday. We plan to file our formal
22 mitigation proposal on May 17th. And that will
23 include one or more options for mitigation.

24 We're also intending to meet with the
25 agencies on May 22nd to talk about those

1 proposals.

2 So we see light at the end of the
3 tunnel, which is the good news. And one aspect,
4 though, is we intend to file the mitigation plan
5 at this point under confidentiality as we conclude
6 negotiations with those landowners.

7 PRESIDING MEMBER KEESE: Thank you.

8 MS. DeCARLO: I am a little concerned
9 that the filing will only contain options and not
10 the designation of a specific parcel. I think
11 that's the key in determining how long it will
12 take for some sort of determination from Fish and
13 Wildlife and Fish and Game, enough for our staff
14 to be content that something will arise.

15 MS. STRACHAN: Sure, I understand. Let
16 me expand a little bit. The options include the
17 identification of specific parcels. What we're
18 looking for, though, is instead of saying we want
19 to use parcel X for mitigation, we want to say we
20 want approval for X and Y for mitigation, and then
21 it allows us to continue our negotiations.

22 HEARING OFFICER WILLIAMS: So that
23 shouldn't really, if everything goes as planned it
24 shouldn't really impact the schedule, right?

25 MS. DAVIS: I can't say that at this time.

1 We'll just have to see what the plan says. And
2 it's definitely determined on Fish and Wildlife
3 and Fish and Game.

4 HEARING OFFICER WILLIAMS: That meeting
5 on the 22nd, it won't conflict with the workshop,
6 though, right?

7 MS. STRACHAN: No, it won't.

8 HEARING OFFICER WILLIAMS: Okay.

9 PRESIDING MEMBER KEESE: Just as an
10 aside, are we generally getting better, more
11 timely cooperation from Fish and Game nowadays?

12 MS. STRACHAN: Do you want to answer
13 that?

14 (Laughter.)

15 MS. STRACHAN: We're getting there.
16 They're very busy; they're under-staffed. It
17 takes a lot of perseverance, but they're at our
18 meetings, and we're having productive meetings.

19 PRESIDING MEMBER KEESE: Okay.

20 MS. STRACHAN: So, it's hard but it's
21 working.

22 PRESIDING MEMBER KEESE: All right.

23 MR. WHEATLAND: Everyone is trying but
24 the frustration is that when you have several
25 different agencies that are interested in the same

1 topic, each may have a different perspective as to
2 the type or location of mitigation that may
3 satisfy their needs.

4 And the real struggle here, as in other
5 cases, is finding a mitigation plan that will make
6 everybody happy.

7 MS. DeCARLO: If I might add, one
8 concern I see about the filing of the mitigation
9 plan under confidentiality is we need to be able
10 to tell people what the proposed mitigation is in
11 our final staff assessment. And if it's still
12 under confidentiality, we won't be able to do
13 that.

14 PRESIDING MEMBER KEESE: Okay, --

15 MR. SARVEY: Yeah, I, as an intervenor,
16 have a problem with the confidentiality aspect of
17 that, too. That gives me no time to respond or no
18 way to respond to the --

19 PRESIDING MEMBER KEESE: Well, it will
20 have to be --

21 MR. SARVEY: -- proposal.

22 PRESIDING MEMBER KEESE: No, it'll have
23 to come out. I understand their need for -- they
24 don't want to buy five different parcels and then
25 be in the position of having to sell off four of

1 them. So they --

2 MR. SARVEY: Do we have details at this
3 present time what type of amount of acreage we're
4 talking about, or any kind of hints as to what
5 this mitigation proposal is going to attempt --

6 PRESIDING MEMBER KEESE: Oh, I think,
7 I'm sure the applicant has been told what --

8 MS. STRACHAN: And it is discussed by
9 staff in the PSA, about for kit fox, for example,
10 the agencies have looked at typically three-to-
11 one. You know, you impact one acre, you replace
12 it with three for permanent impacts. And roughly
13 one-to-one for temporary impacts.

14 So, permanent impacts meaning the actual
15 site, because the project will be on the site.
16 Temporary meaning construction of a pipeline,
17 because you have that construction disturbance,
18 and then everything is back to the way it was.

19 MR. SARVEY: Has any consideration been
20 given to the lighting and the noise effects of the
21 plant in terms of the mitigation plan? Or are we
22 just talking about temporary displacement of the
23 area that the plant, itself, will occupy?

24 MR. WHEATLAND: Right now we're just
25 talking about the biological impacts of -- to

1 native species. The issues of visual and lighting
2 are addressed both in the application and in the
3 PSA. But that's not the specific topic that we're
4 discussing right now in terms of the mitigation
5 plan.

6 PRESIDING MEMBER KEESE: There are
7 generally a lot of mitigations before your
8 document's done.

9 HEARING OFFICER WILLIAMS: Okay, I guess
10 that will wrap up --

11 PRESIDING MEMBER KEESE: Wraps up
12 biological.

13 HEARING OFFICER WILLIAMS: Okay, we'll
14 move on to noise. I guess the big issue in noise
15 is the outstanding data requests?

16 Does someone want to address the data
17 requests and where we are on those? I understand
18 staff has an objection pending to the data
19 requests?

20 MR. WHEATLAND: Well, the applicant's
21 position in this proceeding has been that the
22 project fully complies with all the applicable
23 LORS with respect to the noise issue. And
24 therefore we feel that the staff has all of the
25 information it needs at this time to complete its

1 analysis.

2 The staff indicated in the first issue
3 identification report that was issued quite a long
4 while ago, back on 7/19, July 19th, that it was,
5 at that time, in the process of establishing a new
6 standard for noise for very quiet environments.

7 We have made repeated requests over the
8 last year to see that standard, to ask about its
9 status, and to have some input into it. At this
10 point that information has not been provided to
11 us.

12 We believe it's inappropriate for the
13 staff to establish a new standard in the course of
14 a proceeding. Certainly if the Commission felt
15 the need to establish a noise standard, it could
16 do so, and it would be important that it be
17 established before an application is filed, so
18 that the applicant would have an opportunity to
19 design the facility in conformance with the
20 adopted standard.

21 But our position is that at this late
22 date in the proceeding it's too late to begin to
23 establish a new standard or to try to apply it to
24 this project.

25 So we believe very strongly that it

1 would be appropriate for the staff to go forward
2 and complete its analysis, and to issue the FSA on
3 noise without promulgating this new standard.

4 HEARING OFFICER WILLIAMS: Staff.

5 MS. DAVIS: I guess I wouldn't
6 characterize what staff has been doing as
7 developing a new standard. This phenomenon of
8 having power plants in quiet rural environments is
9 a new one, and so staff has been struggling to
10 determine what constitutes a significant impact
11 under those circumstances.

12 Because a power plant is a noisy
13 facility, and obviously will contribute quite a
14 bit to the quiet environment.

15 Staff does have a methodology for
16 evaluating the significance of noise in rural
17 environments, and I can summarize it for you right
18 now.

19 Under CEQA we determine that there is an
20 adverse impact when the noise from the power plant
21 exceeds 5 decibels above ambient conditions. And
22 a significant impact at 10 decibels above ambient.
23 It's in between 5 and 10 decibels that staff has
24 to look at on a case-by-case basis.

25 And the factors that we consider in

1 determining the significance of this adverse
2 impact include --

3 HEARING OFFICER WILLIAMS: Let me stop
4 you right there. Is that part new? Is that
5 standard new, the 5 and 10 background ambient?
6 And have you applied those in other cases?

7 MS. DAVIS: No, we've used that before.

8 HEARING OFFICER WILLIAMS: So that is
9 not new?

10 MS. DAVIS: Right. And in determining
11 the significance of adverse impact we look at it
12 on a case-by-case basis. We look at the resulting
13 noise level, the duration and frequency of the
14 noise, the number of people that will be affected,
15 and the land use designation of the affected
16 receptor sites.

17 And in this case staff has determined
18 that there is a significant impact without
19 mitigation.

20 I believe that this issue is separate
21 from the issue of staff's data request, in which
22 we are trying to determine the technologies that
23 the applicant might be able to employ, and which
24 technologies might be feasible for mitigating this
25 impact.

1 Staff posed the data requests on March
2 27th. The applicant filed its objection on April
3 8th. And filed a partial response to the data
4 requests on April 26th.

5 Due to the inadequacy of the data
6 response and the applicant's objection to
7 providing further information about the
8 feasibility of noise reduction technologies, staff
9 doesn't see any benefit to further pursuing these
10 data requests. And will proceed with its analysis
11 based on its experience with other projects.

12 PRESIDING MEMBER KEESE: So, you're
13 saying you acknowledge that it complies with LORS?

14 MS. DAVIS: Yes, we do.

15 PRESIDING MEMBER KEESE: But the
16 standard that you've applied in some other cases,
17 of 5 to 10 over ambient --

18 MS. DAVIS: This is a CEQA impact --

19 PRESIDING MEMBER KEESE: -- it doesn't,
20 you had requested applicant to give you ideas of
21 what could be done to bring it down?

22 MS. DeCARLO: The applicant, in a
23 workshop we've had previously, mentioned that they
24 would not be able to bring it down below 43 or 44
25 dba. And so we were just trying to attempt to

1 find out why that was, why --

2 PRESIDING MEMBER KEESE: What is
3 ambient?

4 MS. DeCARLO: Ambient is, I believe, 34.

5 MR. WHEATLAND: Thirty-four what?

6 MS. DeCARLO: L90, 34 dba L90.

7 MR. WHEATLAND: When?

8 MS. DeCARLO: We averaged four hours?

9 MR. BUNTIN: Four hours at night, right.

10 MS. DeCARLO: We've averaged four of the
11 quietest nighttime hours.

12 HEARING OFFICER WILLIAMS: Sir, could
13 you identify who you are for the record, too,
14 please.

15 MR. BUNTIN: Yes, I am Jim Buntin,
16 consultant to the Energy Commission Staff.

17 HEARING OFFICER WILLIAMS: Thank you.

18 MR. WHEATLAND: And I'd like to
19 introduce Rob Greene, who is the consultant to the
20 applicant on the noise issue.

21 HEARING OFFICER WILLIAMS: Thank you.

22 PRESIDING MEMBER KEESE: So we
23 established someplace that ambient is 34?

24 MS. DeCARLO: Yes. And the applicant
25 has -- so we've designate about 39 as five, plus 5

1 dba. And the applicant has informed us that they
2 can't get below 43 or 44.

3 And so we're just attempting to
4 investigate why that is. If there is possibly
5 some feasible mitigation out there that could get
6 them a little lower.

7 PRESIDING MEMBER KEESE: Okay.

8 MR. WHEATLAND: If I could, please?
9 First of all I think it's very important, when I
10 said that the staff was establishing a new
11 standard I wasn't stating that lightly.

12 From the staff's own issue
13 identification report July 20, 2001, on page 7,
14 after reciting the fact that the applicant's
15 position is that it's in compliance with LORS, the
16 staff stated: However, staff will --

17 HEARING OFFICER WILLIAMS: Excuse me,
18 what are you reading from, Mr. Wheatland?

19 MR. WHEATLAND: I'm reading from the
20 Commission Staff's issue identification report
21 that was filed with this Commission on July 20,
22 2001, in this proceeding.

23 "However, staff will carefully consider
24 the question of establishing a reasonable and
25 practical noise standard for very quiet

1 environments."

2 They go on to discuss the type of
3 standard that they might establish. And they
4 said, with these concepts in mind staff will
5 evaluate the practical effects of setting a noise
6 standard which allows a greater than 5 dba
7 increase in background noise levels, while
8 limiting the noise level to the maximum practical
9 extent.

10 Now, for the first time in this
11 proceeding is suggesting for the first time that
12 they've done that. And that they've determined
13 that number to be 10 dba.

14 And what I'm suggesting to the Committee
15 is that I think it's inappropriate for the staff,
16 ten and a half months into the AFC, to be
17 announcing their new standard. We feel very
18 strongly that the application should be judged
19 based on the standards that were in effect at the
20 time the application was filed.

21 MS. DeCARLO: Unfortunately that was
22 probably a mischaracterization on our part,
23 delineating it as a standard. It's not
24 necessarily a standard; it's just an attempt by us
25 to address these new situations of these power

1 plants in these ultra-quiet environments. An
2 attempt to determine some sort of criteria by
3 which we can determine, even though the project
4 complies with LORS, if there is indeed a CEQA
5 impact.

6 And Jim can speak more on that.

7 MR. BUNTIN: Right. Short of going into
8 any detail, under CEQA we're charged with
9 determining whether there is a substantial
10 permanent impact -- sorry, let me rephrase that --
11 substantial permanent increase in ambient noise
12 levels.

13 And other CEQA case law has left us with
14 the fact that we need to determine that on a case-
15 by-case basis.

16 The Commission has, in the past, used a
17 5 decibel threshold to determine if the background
18 noise level is increased by 5 decibels or more
19 there's a potential for impact. And our question
20 is what do we do above that point. At what point
21 is the impact, in fact, significant.

22 And it's that issue that is necessarily
23 decided on a case-by-case basis because the
24 ambient noise level varies from project to
25 project, and the resulting noise level varies.

1 Now, obviously our upper limit is the
2 LORS. We can't go beyond that. You've heard a
3 reference to 10 decibel criterion. That is
4 something that we've been discussing in-house as a
5 clearly significant change, relying on criteria
6 adopted, for example, by the Federal Transit
7 Administration.

8 And obviously in certain cases that
9 might be a little fuzzy, as well. You know, if
10 our resulting noise level is something like 25
11 decibels with a 10 decibel change. You have to
12 look at that to see if that's really truly an
13 impact.

14 But it's in that range. Once we cross
15 the threshold and we're below LORS, now we're
16 trying to figure out what is truly significant.
17 As Cheri mentioned, you want to consider what the
18 resulting noise level is. If it's very very
19 quiet, it may be unreasonable to set a very very
20 quiet noise level limit.

21 And so let me pass on that for a second.
22 And then the other thing is how many people are
23 affected. In this case we have about three
24 residences that would experience, under the
25 proposal, an increase of 13 -- I'll have to look

1 at the document for sure, but anywhere from 6 to
2 maybe 13 decibels increase in the background noise
3 levels at the quietest time of night. And it's
4 those receivers that we're concerned about.

5 And we will be proposing a standard. We
6 will also be proposing for this project a
7 condition of certification to use the correct
8 term. And we will provide a graphic that
9 illustrates what the noise is like in that quiet
10 hour, or one of those quiet hours during the night
11 so that you can compare the LORS standard to what
12 actually exists there today, and see that that is,
13 in fact, a substantial change.

14 I think we can anticipate that the
15 applicant will propose a higher noise level
16 standard than we will. And they may propose
17 offsite mitigation, and that's the last point I
18 wanted to make.

19 The staff has traditionally preferred
20 onsite noise mitigation; in other words, trying to
21 get as much noise reduction as you can at the
22 plant, itself, rather than going to the receiver.
23 Though, the Commission has accepted treating
24 receivers, sound insulating a house, for example.

25 And in this case the data response that

1 the -- the response to the data requests we got
2 address one particular noise source, and not
3 perhaps the most significant noise source.
4 Because no matter what change you made, it didn't
5 make much of a difference in the total noise
6 level.

7 So, under CEQA, ultimately we have to
8 determine whether or not we can achieve a point of
9 no significance. And if not, whether the
10 applicant has done everything that's feasible to
11 try to reach that point of insignificance.

12 And so far we don't have enough
13 information to determine what's feasible. And I
14 think that would be the essence of the discussion
15 during the evidentiary hearings.

16 And I think feasibility is, from a cost
17 standpoint, is beyond our scope as noise
18 consultants, but certainly we can talk about
19 whether it's technically feasible to do anything
20 more. And we've suggested some potential avenues,
21 but we aren't in the business of designing power
22 plants, so we don't want to do so far as to say
23 you must do this and you must do that.

24 HEARING OFFICER WILLIAMS: I take it
25 your analysis is being guided by recent court

1 decisions in this area?

2 MR. BUNTIN: The one I was referring to
3 is the one concerning the Oakland Airport, which
4 unfortunately I was on the airport's side on that
5 one, and the citizens opine that you had to
6 consider a number of different factors, and you
7 couldn't just draw a simple line in the sand and
8 say there's an impact above this point and below
9 that point -- and not below that point.

10 And in that case, and in others, the
11 courts have clearly said that under CEQA you have
12 to consider each case individually.

13 HEARING OFFICER WILLIAMS: Do you know
14 if that court of appeal case is still -- was it
15 rescinded or -- I know it was on review through
16 the supreme court.

17 MS. DAVIS: The one in Oakland?

18 HEARING OFFICER WILLIAMS: Yes.

19 MS. DAVIS: It's still valid as far as I
20 understand. And can I just add that we did
21 indicate in our preliminary staff assessment that
22 we did find a potential significant impact. And
23 that's why we're pursuing potential mitigation
24 measures at the workshop for the applicant.

25 PRESIDING MEMBER KEESE: I think staff

1 has done a good job of explaining where they're
2 coming from. Applicant?

3 MR. WHEATLAND: I'd like to ask Mr.
4 Greene to briefly address these issues.

5 MR. GREENE: Thank you. Rob Greene for
6 the applicant. And like Mr. Buntin, let's not get
7 into real minor details, but I think it's
8 important to lay out the applicant's main issue,
9 is that without a finding of significance we
10 believe there's no additional reasons to be
11 speculating on how quiet the plant could be, or
12 how many millions of dollars we could spend to
13 gather a little db, so --

14 HEARING OFFICER WILLIAMS: Sir, let me
15 stop you before you get into that. As I
16 understand it, the issue is LORS compliance on the
17 one hand, and CEQA on the other, okay?

18 MR. GREENE: Yes. With respect to LORS
19 we comply, --

20 HEARING OFFICER WILLIAMS: Right.

21 MR. GREENE: -- and staff has agreed to
22 that.

23 HEARING OFFICER WILLIAMS: Okay, --

24 MR. GREENE: With respect to CEQA there
25 are some significant issues that differentiate the

1 staff's position from the applicant's position.

2 One is a minor word definition, CEQA calls for a
3 comparison of project noise levels with the
4 ambient. And the ambient has been defined by the
5 State of California as all the noise near and far
6 that affect a particular location.

7 It does not say that is the background.
8 And the staff has been of the opinion that
9 background is what sets the bar. We do not agree
10 with that. And they have used the L90 criteria as
11 opposed to what the State of California typically
12 uses, which is the day/night level.

13 The L90 artificially excludes a great
14 deal of noise that affects the site, and you get a
15 lower number, a lower numeric value. In this case
16 staff is asserting that's about 34 decibels.

17 And then on top of the L90, or in
18 addition to that, selective, the staff has looked
19 at the quietest four hours of L90, limiting even
20 further the characterization of ambient.

21 So we have a real deep concern that L90
22 quietest four hours does not represent the ambient
23 as is specified in CEQA. So that's the first
24 issue with CEQA.

25 The second issue is that CEQA does not

1 specify a particular amount of decibels above the
2 level that constitutes significance. And frankly,
3 we're pleased to see the staff looking at some of
4 the more recent approaches to determining
5 significance by using a scale that might not be 5
6 decibels everywhere, and might include 10
7 decibels. We agree with that approach.

8 So, it is definitely a step in the right
9 direction. It's consistent with the more recent
10 federal work in this area to say that in quiet
11 environments it's quite likely more decibels are
12 allowable because of the decreased amount of
13 sound. And that's good.

14 I think our real concern, though, is
15 setting this arbitrary numerical bar at such a low
16 number by using the L90 quietest four hours.
17 That's the real concern that we have.

18 We believe if we're allowed to use what
19 the State of California uses for noise and land
20 use compatibility, which would be the DNL or LDN
21 or level day night, all the same thing, this
22 plant, as proposed, would be in compliance.

23 Finally, what the applicant is proposing
24 to be able to do feasibly from an engineering
25 standpoint of providing a 43 decibel plant at the

1 nearest sensitive receptor -- 45 decibel plant at
2 the nearest receptor is a very quiet environment.
3 That is providing a quiet environment, which by
4 all scientific research, does not constitute an
5 adverse effect on sleep, on speech, on sensitive
6 uses of hospitals, motels, hotels, residences,
7 parks or any other sensitive use. It's a very
8 very quiet environment.

9 By the staff report which is in the
10 documentation, it even lists sound levels in that
11 area of 45 decibels as quiet. And we would assert
12 that quiet does not constitute a significant
13 impact -- does not constitute a significant
14 adverse impact.

15 PRESIDING MEMBER KEESE: Okay, we don't
16 been to debate this issue which will face this
17 Committee. I think you've each focused very well
18 on your point of view, and that will be coming
19 here.

20 Would you have, since staff has thrown
21 out a number, 34, would you throw out a number on
22 what LDL is? Just --

23 MR. GREENE: Oh, I --

24 PRESIDING MEMBER KEESE: -- to inform
25 our --

1 MR. WHEATLAND: Yeah, let us look that
2 up, because I don't want to give you the wrong
3 number.

4 PRESIDING MEMBER KEESE: Okay. No,
5 that's all right. It's certainly above staff's
6 number?

7 MR. WHEATLAND: Yes, it's above 34, yes.

8 PRESIDING MEMBER KEESE: Okay.

9 MR. GREENE: That's correct.

10 HEARING OFFICER WILLIAMS: And the data
11 requests are rescinded, I guess?

12 MS. DeCARLO: We won't pursue a motion
13 to compel.

14 MR. WHEATLAND: That's the good news, is
15 the staff, as I'm hearing it the staff has the
16 information now they need to proceed to complete
17 their analysis on noise, and that's great news.

18 PRESIDING MEMBER KEESE: Right, and
19 applicant is on notice of what staff's hoping for,
20 and I would assume that applicant would, in its
21 presentation, cover that side of the issue, also.

22 MR. WHEATLAND: Right. Just also I want
23 to just clarify one point in the record because
24 there may have been a mis-impression by staff.
25 The 43 dba number that's been mentioned was a

1 number that was discussed when we had our issues
2 workshop following the PSA.

3 And I was actually the one that
4 mentioned that number. And I didn't mention it in
5 the context that this plant can go down to 43 or
6 it can't go down below 43. What I did was offer
7 it to Mr. Buntin at that time in the nature of an
8 offer of compromise and settlement of this issue.

9 The staff had said in the PSA they
10 thought we should be at 40. We said we are in
11 conformance with LORS at 45. And I offered the
12 staff at that time, I said, well, can we split the
13 difference and make it 43 and not have to litigate
14 this issue.

15 That was the sole context of that
16 number. That offer of settlement still stands,
17 but that was the reason that that number came
18 about. We weren't talking about --

19 PRESIDING MEMBER KEESE: All right.
20 Well, we'll let that sit between the two of you.
21 I think that should close off noise. Anybody else
22 wish to discuss noise?

23 MS. DAVIS: I would just like to ask the
24 applicant is there's any value to discussing this
25 in a workshop setting. It sounds like there is

1 not, but I would like to confirm that right now.

2 MR. WHEATLAND: We'd love to discuss it
3 with you as long as it doesn't delay the
4 preparation of the FSA.

5 HEARING OFFICER WILLIAMS: Well, maybe
6 you could have some discussion on the 22nd.

7 PRESIDING MEMBER KEESE: I think the
8 issues are pretty well defined here.

9 All right, item four, transmission
10 system engineering. Data requests out?

11 MR. WHEATLAND: My understanding is that
12 there is one single additional piece of
13 information that the staff was requesting. In our
14 status report -- the supplement to our status
15 report, we noted our objections to providing that
16 information, but said we have an even stronger
17 interest in moving this case along. So we have
18 agreed to provide that letter agreement to the
19 staff as soon as we can, and hopefully within one
20 week.

21 HEARING OFFICER WILLIAMS: So, staff,
22 that's all you need, right?

23 MS. DAVIS: Right, and actually we're in
24 the process of finalizing our FSA on that subject
25 area, so that will move along.

1 HEARING OFFICER WILLIAMS: Okay.

2 PRESIDING MEMBER KEESE: Anybody else
3 commenting on that issue? All right, let's move
4 to water supply.

5 MR. WHEATLAND: Well, it's the
6 applicant's understanding that staff has all of
7 the information it now needs to complete its
8 analysis in the area of water supply.

9 MS. DAVIS: Yes, we agree.

10 HEARING OFFICER WILLIAMS: Mr. Flory,
11 are you still there?

12 MR. FLORY: Yes, I am.

13 HEARING OFFICER WILLIAMS: Do you care
14 to add anything? I know you were here in January.
15 Is DWR satisfied with the status?

16 MR. FLORY: Yes, we are. We had hoped
17 to come to an agreement with Byron Bethany
18 Irrigation District, the District that we have a
19 relationship with, on just the rate and the amount
20 they would take during a year. But we haven't
21 come to closure on that yet. We're very close.

22 But after analyzing the situation here
23 we felt like this is -- we've got an impact, but
24 it's a minimal impact, and we think it's probably
25 within what their historical kind of operation has

1 been. So it's not going to be a problem for us.

2 HEARING OFFICER WILLIAMS: Okay, good.

3 Thank you.

4 MR. FLORY: I'll sign off unless you
5 have other --

6 HEARING OFFICER WILLIAMS: Any
7 questions?

8 MR. SARVEY: I have some concerns
9 related to the water usage here. It's more of a
10 San Joaquin County issue and Board of Supervisors
11 who I discussed this with yesterday. They're very
12 concerned about this water usage --

13 PRESIDING MEMBER KEESE: For those on
14 the phone this is Mr. Sarvey.

15 MR. SARVEY: And the Bureau of
16 Reclamation has just announced that the farmers
17 here are going to receive 55 percent of their
18 allotment. In the last five years the normal
19 percentage has been 75. And it's a continuing
20 erosion of water availability to the farmers.

21 So the Board of Supervisors has a
22 definite interest in this and would like to
23 discuss this with Calpine or the Energy Commission
24 or whoever. But, they do seem to be quite upset
25 about this issue.

1 HEARING OFFICER WILLIAMS: You mean the
2 Board of Supervisors --

3 MR. SARVEY: Supervisors of San Joaquin
4 County.

5 HEARING OFFICER WILLIAMS: And you say
6 you discussed this matter with them?

7 MR. SARVEY: Yesterday we had a
8 discussion on it, yeah.

9 PRESIDING MEMBER KEESE: Let me ask,
10 you're saying the last couple years --

11 MR. SARVEY: The last five years they
12 received approximately an average of 75 percent.
13 This year we're cut down to 55 percent of --

14 PRESIDING MEMBER KEESE: Well, --

15 MR. SARVEY: -- normal allotment --

16 PRESIDING MEMBER KEESE: -- let me ask
17 whether you're cut down yet, or -- I know they
18 generally begin announcing guaranteed amounts.

19 MR. SARVEY: Yes, this is an estimate.

20 PRESIDING MEMBER KEESE: And they're up
21 to 55?

22 MR. SARVEY: Right.

23 PRESIDING MEMBER KEESE: So you're not
24 necessarily capped at 55 yet; you're guaranteed 55
25 so far?

1 MR. SARVEY: Well, I think they're all
2 just estimates at this point, and expect to
3 receive 55. But that number could go lower, also.

4 PRESIDING MEMBER KEESE: Well, what I
5 want to know is for the last five years at this
6 time of year what was the number you were
7 guaranteed?

8 MR. SARVEY: I'm sorry, I can't provide
9 that information for you, but I'll --

10 PRESIDING MEMBER KEESE: Yeah, because
11 we're aware -- I'm reasonably familiar with it.
12 You're talking about apples and oranges here.
13 This has been a very good year. That number could
14 wind out to be 95 percent. I have no idea,
15 because I haven't followed it this year.

16 But they always are generally
17 conservative in making their -- they're generally
18 conservative enough in making their guarantees
19 that they're never going to have to retrench from
20 that.

21 So, I'm willing to have it be an issue,
22 but you'll have to clarify --

23 MR. SARVEY: I'll define it later.

24 PRESIDING MEMBER KEESE: -- you'll have
25 to clarify the number here for us before we can

1 feel it's something that we can deal with.

2 Okay, that covers all our water issues
3 essentially? Major?

4 HEARING OFFICER WILLIAMS: Yes, I
5 believe it --

6 MS. DUNN: Sir, I'm Sandra Dunn; I'm
7 Special Counsel to BBID. I might be able to
8 address a little bit the point that was just made.

9 PRESIDING MEMBER KEESE: Sure.

10 MS. DUNN: I think what Mr. Sarvey was
11 referring to was the allocation that the Central
12 Valley Project is making to the exporters in the
13 San Joaquin Valley, which is something that they
14 determine for the Central Valley Project on a
15 yearly basis.

16 The water rights that BBID is providing
17 are not part of the Central Valley Project; they
18 have water rights that are senior to those of the
19 Central Valley, being pre-1914 water rights.

20 And so those allocations that the CVP
21 made are really not affected, or BBID's use of
22 water does not really affect it. It really has
23 more to do with the obligations that the Central
24 Valley Project has to other customers and to the
25 environment under their Central Valley Improvement

1 Act.

2 So, I think it is really unrelated to
3 this issue.

4 PRESIDING MEMBER KEESE: Thank you. And
5 if you wouldn't mind sharing your card with him so
6 if he has any further questions?

7 MS. DUNN: Sure.

8 PRESIDING MEMBER KEESE: Thank you.

9 MR. GILMORE: Good morning.

10 HEARING OFFICER WILLIAMS: Good morning.

11 MR. GILMORE: My name is Rick Gilmore
12 and I'd like to make -- my comments will be with
13 respect to the use of reclaimed water.

14 And I would like to reemphasize that
15 BBID is interested in the development of recycled
16 water as a benefit to its service area and to the
17 customers which it serves.

18 The District has developed policies to
19 encourage the use of recycled water within the
20 service area. And even though the recycled water
21 does not yet exist within the District, the board
22 of directors has evaluated potential recycled
23 water supplies along with the District's role in
24 providing those supplies.

25 BBID's overall plan and policies have

1 been developed to assist in the evaluations of
2 providing recycled water supplies to the East
3 Altamont Energy Center.

4 The CEC Staff has not, to date, spoken
5 to BBID about those policies, nor inquired about
6 the potential role of BBID in encouraging recycled
7 water reuse within the District.

8 BBID is making plans for future recycled
9 water development because of the important
10 benefits that such supplies can provide to the
11 District and its customers.

12 And in that regard the East Altamont
13 Energy Center is a very important potential
14 customer for BBID's future recycled water
15 supplies. And the board of directors of BBID
16 supports this project and stands ready to provide
17 the related services necessary.

18 In addition, one other comment with
19 respect to the status report number five in the
20 soils and water resources section, the last
21 paragraph in that section on page 6, where the
22 staff indicates that they have had discussions
23 with representatives from the Mountain House
24 Community Services District, based on my
25 discussions with the board of supervisors, the

1 board of directors of the CSD and the staff, those
2 discussions which the CEC Staff have had have
3 actually been with the master developer, TriMark
4 Communities, and not with the CSD. I think the
5 record should reflect that.

6 Thank you.

7 PRESIDING MEMBER KEESE: Thank you.

8 HEARING OFFICER WILLIAMS: Thank you,
9 Mr. Gilmore. Staff, do you want to comment on
10 that at all?

11 MS. DeCARLO: Well, if I could just
12 quickly respond to the assertion that we haven't
13 spoken with BBID over the availability of recycled
14 water. I think that's what I heard. If that's
15 incorrect, please correct me.

16 But we have indicated on a number of
17 occasions in open workshops where BBID was present
18 that we were very interested in pursuing the
19 maximum amount of recycled water to be made
20 available to the applicant.

21 So I just want it clear that we have
22 indicated on several occasions that that was our
23 pursuit. And we've got responses by both the
24 applicant and BBID that they weren't interested in
25 defining a specific amount, but that the applicant

1 would be able to get whatever recycled water BBID
2 chose to make available to it.

3 PRESIDING MEMBER KEESE: I assume there
4 is something in the PSA on recycled water?

5 MS. DeCARLO: Yes, there's a lengthy
6 discussion.

7 PRESIDING MEMBER KEESE: And there will
8 be something in the FSA?

9 MS. DeCARLO: Yes.

10 PRESIDING MEMBER KEESE: Okay, thank
11 you.

12 HEARING OFFICER WILLIAMS: Western, I
13 understand that National Marine Fisheries, they
14 are happy with the --

15 MR. SORNBORGER: I'm mulling over -- I
16 wish I would have brought the National Marine
17 Fisheries' letter with me. I did not. But it
18 seems to me that there is a sentence in that
19 letter saying that they're fine with the way
20 things are right now, given that the East Altamont
21 Energy Center will pursue the use of reclaimed
22 water, or goes along with those timelines.

23 I don't have those particular words
24 before me, but there are some words --

25 PRESIDING MEMBER KEESE: I think the

1 words are approaching you. Or approaching us.

2 (Laughter.)

3 HEARING OFFICER WILLIAMS: Yeah, I think
4 that the central tenet of everybody's cooperation
5 and willingness to approve the arrangement for the
6 East Altamont project, it is the provision at some
7 point of recycled water to replace the raw water
8 that is to be drawn from the Delta.

9 Now, I think the AFC talked about
10 possible replacement of the raw water over a
11 period of what, 15 to 20 years. Is that still
12 what you're looking at?

13 MR. WHEATLAND: Yes, absolutely. I'd
14 like to clarify that the applicant has never said
15 that it's not interested in defining the supply of
16 recycled water. We simply said that there isn't
17 enough information at this time to do so.

18 In order for this project to receive
19 recycled water there has to be such a supply. And
20 that supply through Mountain House is just now
21 emerging as that development comes into being.

22 But we have designed the facility to
23 receive recycled water. We expect to receive
24 recycled water. And we expect, as those supplies
25 develop, that recycled water will be the

1 substantial amount of water that's received by the
2 project as that supply develops.

3 But at this point, because Mountain
4 House is not in existence, it's impossible to
5 define a specific level of use.

6 PRESIDING MEMBER KEESE: Thank you.
7 Would you like to share the specific wording that
8 we have?

9 MR. HELM: Yeah, I'd like to read from
10 the NMFS letter that was referenced. First of all
11 it says the East Altamont --

12 HEARING OFFICER WILLIAMS: That's a new
13 acronym, I believe it's --

14 MR. HELM: National Marine Fisheries
15 Service. I'm sorry.

16 HEARING OFFICER WILLIAMS: Yeah.

17 MR. HELM: "The East Altamont Energy
18 Center intends to purchase its raw and recycled
19 water from the BBID. Raw water will be pumped
20 through a 24-inch pipeline from Canal 45;
21 reclaimed water will come from the site of the
22 Mountain House Community Services District
23 wastewater treatment plant when it comes online.
24 Additional options include utilizing recycled
25 water from the Discovery Bay Wastewater Treatment

1 Facility as it becomes available."

2 And then we get to the section where
3 sort of the heart of the matter, "Based on this
4 review and the best scientific commercial
5 information currently available, and provided the
6 conservation measures described in the proponent's
7 project description and in documents supplied to
8 the CEC are fully implemented, and that the legal
9 standing of Byron Bethany Irrigation District's
10 water rights remain unchanged, we concur the
11 proposed EAEC is not likely to adversely affect
12 threatened Central Valley Steelhead, central
13 valley spring run Chinook Salmon, or endangered
14 Sacramento River winter run Chinook Salmon. Nor
15 is it anticipated that the proposed project will
16 adversely modify designated critical habitats."

17 So those are the caveats with respect to
18 the applicant's position.

19 PRESIDING MEMBER KEESE: Thank you.
20 Enough to close off the water issue? Any further
21 comments on water?

22 HEARING OFFICER WILLIAMS: As one of the
23 matters before turning to the schedule, I think
24 it's important that in light of the fact that
25 staff indicates in its status report that it will

1 be proposing substantially new conditions in the
2 final staff analysis in a number of areas, I take
3 it, that to the extent practicable that there is
4 some consultation with staff, some, you know,
5 information given to applicant, I'm sorry, on
6 those new conditions to optimize to the extent
7 possible a discussion of those, so that they
8 hopefully won't have an impact on the schedule.

9 MS. DeCARLO: And one of the intents of
10 establishing a workshop on the 22nd was to review
11 with applicant our proposed conditions that have
12 changed since the PSA.

13 HEARING OFFICER WILLIAMS: Okay. Thank
14 you.

15 PRESIDING MEMBER KEESE: All right,
16 schedules.

17 HEARING OFFICER WILLIAMS: I take it,
18 applicant, you've seen the chart that the staff
19 has so graciously provided us?

20 MR. WHEATLAND: Yes.

21 HEARING OFFICER WILLIAMS: In terms of
22 our schedule from here, the Committee will
23 publish, subsequent to today, a revised schedule
24 for our proceeding.

25 So, to the extent that we can reach some

1 kind of agreement here on what that schedule
2 should look like, it would be beneficial to
3 everyone, I think.

4 Staff, I take it that this chart
5 predicts that there will be a final staff
6 assessment released on June 18th, is that right?
7 Am I reading it --

8 MS. DAVIS: No. If you go down to item
9 number 15, it says if Western -- actually let me
10 direct you first to item number 8. And Kirk,
11 who's from Western, you can butt in at any time
12 and tell me if I'm reading this correctly, because
13 this was developed by Western in consultation with
14 us.

15 Item number 8, Western decides whether
16 they can go forward with the environmental
17 assessment as we've been doing so far, or whether
18 they would pursue the environmental impact
19 statement instead.

20 And then item number 9 starts with if
21 they pursue the environmental assessment. Then if
22 you look at item number 15, the FSA will be issued
23 on July 25th.

24 HEARING OFFICER WILLIAMS: What goes
25 into that decision again on whether or not an

1 environmental assessment as opposed to a
2 statement, I guess?

3 MR. SORNBORGER: What's going to hinge
4 on that really is what comes out of staff's
5 analysis and the preliminary FSA, the sections
6 that we receive.

7 A lot of that review is done at the
8 headquarters level of whether --

9 HEARING OFFICER WILLIAMS: Which is in
10 Colorado?

11 MR. SORNBORGER: Yeah, it's actually
12 called Corporate Services Office, headquarters is
13 in D.C. But it's just easier to refer to as
14 headquarters. But a lot of that review is done in
15 Colorado as far as making a determination of
16 whether to pursue an EIS or an EA.

17 Based on what we've seen so far Western
18 is very confident that we'll continue down the EA
19 path. Should a significant issue occur we would
20 have to pursue the EIS.

21 But like I say, we don't see that at
22 this point.

23 PRESIDING MEMBER KEESE: But that
24 decision is made by headquarters?

25 MR. SORNBORGER: That decision will be

1 made by headquarters.

2 PRESIDING MEMBER KEESE: Okay. And that
3 decision could be made on the 18th?

4 MR. SORNBORGER: We're looking at making
5 that decision on the 18th, that is correct.

6 PRESIDING MEMBER KEESE: Okay.

7 MS. DAVIS: These dates are assuming
8 that the FDOC comes in on May 28th as the
9 applicant earlier predicted. And that the
10 biological mitigation plan is acceptable to Fish
11 and Wildlife Service --

12 PRESIDING MEMBER KEESE: Okay, now I
13 thought --

14 MS. DAVIS: -- and Fish and Game, so I
15 would like to --

16 PRESIDING MEMBER KEESE: -- I thought we
17 had already said that May 28th --

18 MS. DAVIS: -- insert those caveats.

19 PRESIDING MEMBER KEESE: -- wasn't going
20 to work, though?

21 MS. DAVIS: Right, right.

22 PRESIDING MEMBER KEESE: Or --

23 HEARING OFFICER WILLIAMS: Unlikely.

24 PRESIDING MEMBER KEESE: -- was a rather
25 optimistic date at this time. That it's more

1 likely a week or two later?

2 MS. DAVIS: Right, and this is why
3 staff's been hesitant to put down dates in the
4 past, because we know that these dates can change.

5 PRESIDING MEMBER KEESE: Are we together
6 here? Is the --

7 MR. WHEATLAND: I'm sorry? Oh, May
8 28th, yes, I think we've agreed today that it
9 could be as early as May 28th, but it may be, as
10 Mr. Rubenstein said, by mid June.

11 PRESIDING MEMBER KEESE: June. Could be
12 June 14th.

13 MR. WHEATLAND: For when the FDOC --
14 worst case.

15 PRESIDING MEMBER KEESE: Which would --
16 and for Western that would slip it about --
17 whatever that slips is what it will slip your
18 schedule, is that fair to say?

19 MR. SORNBORGER: That's correct.

20 PRESIDING MEMBER KEESE: So, --

21 HEARING OFFICER WILLIAMS: Western, what
22 is --

23 PRESIDING MEMBER KEESE: Let me follow.
24 So, staff is comfortable that that item 6, which
25 is the FSA administrative draft, I guess that's a

1 precopy or preview version for Western?

2 MR. SORNBORGER: I'd say that's
3 accurate. What you just said, the administrative
4 draft or the drafts that we see as they come off
5 of Cheri's desk --

6 PRESIDING MEMBER KEESE: As it comes off
7 of it. And that's a realistic time for you, also?

8 MR. SORNBORGER: I'm sorry, the --

9 PRESIDING MEMBER KEESE: And for staff,
10 the delivering that document on the 25th? Or, --

11 MR. SORNBORGER: When you say that
12 document, sir, I'm not --

13 PRESIDING MEMBER KEESE: All right, the
14 staff's, item 6 here, the staff completes the
15 analysis for the FSA administrative draft.

16 MR. SORNBORGER: Um-hum.

17 PRESIDING MEMBER KEESE: And is that a
18 timely --

19 MS. DAVIS: I would like to just clarify
20 that as we receive sections, as we go through
21 these different draft versions, you'll see --

22 PRESIDING MEMBER KEESE: PDOC.

23 MS. DAVIS: Yeah, the administrative
24 draft -- the preliminary draft. That each time we
25 get a new section from our technical staff we are

1 circulating it through Western Staff, as well. So
2 they're reviewing it as it --

3 PRESIDING MEMBER KEESE: As it comes
4 along?

5 MS. DAVIS: --concurrent with Energy
6 Commission review --

7 PRESIDING MEMBER KEESE: But it will
8 take you about ten days -- this is indicating it
9 will take you about ten days after the PDOC comes
10 out?

11 MS. DAVIS: For staff to complete their
12 analysis and their --

13 PRESIDING MEMBER KEESE: For Western to
14 use to make their determination? All I'm asking
15 is, is this -- is the date that Western has
16 submitted to us of the 18th realistic, accepting a
17 day-by-day slippage as the PDOC slips?

18 This is not concrete. Does that look
19 like about right?

20 MR. SORNBORGER: We've committed to a
21 five-day review cycle for from when we receive the
22 FSA sections, we've committed to a five-day review
23 cycle. And based on the PSA we've met that cycle.
24 We use that same --

25 PRESIDING MEMBER KEESE: Good.

1 MR. SORNBORGER: -- milestone in the
2 PSA. Yeah, you know, I mean we're pretty
3 confident with that date.

4 PRESIDING MEMBER KEESE: Okay.

5 HEARING OFFICER WILLIAMS: The question
6 I had was -- I guess it's two questions. Because
7 I need to jog my memory a little bit. We talked
8 about -- because applicant, the focus of my
9 question is applicant's request for bifurcation.

10 We talked about that a little bit in
11 January, the fact that Western would prefer to
12 have an entire document to review. That was its
13 stated preference.

14 And so my question was in that light if
15 we could possibly work something out. And I take
16 it Western is not interested in, or correct me if
17 I'm wrong, your folks will review the entire
18 document, all of the sections, for completeness?
19 Or is it --

20 MR. SORNBORGER: Western's requirement
21 is that if we are to go along with the joint FSA-
22 EA process, is that we have a requirement of a
23 complete document.

24 We've broached that with general
25 counsel, and it is a guideline of DOE that the

1 decision to be made on the document must be a
2 complete document.

3 So if we were to continue down this
4 bifurcated path, Western would split from the FSA-
5 EA process and have to go down our own EA. Our EA
6 will be the FSA, but it would be the complete FSA
7 instead of sections of the FSA.

8 We could do that. We would prefer not
9 to do that. We feel it's in the public's best
10 interest to have a single document for review
11 purposes. But we can do that.

12 HEARING OFFICER WILLIAMS: Does that
13 clarify it for you, applicant, in terms of what
14 we're looking at here?

15 MR. WHEATLAND: Well, we understand
16 their position. I'd like to, at the appropriate
17 time, to address these issues. Can I --

18 HEARING OFFICER WILLIAMS: Well, I guess
19 now is the time.

20 MR. WHEATLAND: All right. I think
21 there are two separate issues that need to be
22 made. One is the staff is taking a position in
23 this case that the time at which it begins the
24 final preparation of the FSA begins to toll as
25 soon as they have received all of the outstanding

1 issues and information in this case.

2 We all agree that the big issue is the
3 FDOC. We've discussed two other items here today.
4 One is the biological mitigation plan, which we've
5 indicated will be received by May 17th. And the
6 other issue is the question of a visual simulation
7 of the plume.

8 But I'm just going to ask to set those
9 aside for a minute and just focus, because both of
10 those, I think, if they were required, would be --
11 that is the picture of the plume would be
12 satisfied before the issuance of the FDOC.

13 So the real question -- I think the
14 first question is must the staff await the
15 completion of the FDOC to begin the final
16 preparation of its FSA, or could it do so --

17 PRESIDING MEMBER KEESE: And I thought I
18 heard the answer is no, they've been delivering
19 sections already, which have been reviewed by
20 Western already.

21 MR. WHEATLAND: Right. Well, there are,
22 in the original IIR there were 23 different
23 subject areas. By our count there are at least 15
24 where there is no controversy, there's no areas of
25 disagreement between us and the staff, and which

1 there's no outstanding information.

2 By our count there's a few where the
3 staff indicates it is still doing its analysis.
4 And then there were the three that I just
5 mentioned where they believe there's outstanding
6 information.

7 So that's one issue. And we had
8 mentioned in our supplement to our update that in
9 numerous cases this Commission has used a
10 bifurcated process. In fact, the Auditor General,
11 in doing --

12 HEARING OFFICER WILLIAMS: Yeah, we're
13 with you on that. We're with you on that.

14 MR. WHEATLAND: Yeah, and that was even
15 though where there's been an EA and an EIS, the
16 Commission has used a bifurcated process. So our
17 question --

18 PRESIDING MEMBER KEESE: But Western
19 doesn't.

20 MR. WHEATLAND: Well, it was with
21 Western.

22 HEARING OFFICER WILLIAMS: But that was
23 another case. I mean they've stated, you know, we
24 can't argue with what their requirements are,
25 Mr. Wheatland.

1 MR. WHEATLAND: I know what you're
2 saying. If it's impossible to bifurcate the
3 process what we would suggest to you is you
4 examine the possibility of having the EA separate
5 from the final staff assessment, so that the staff
6 could issue its FSA in parts at an earlier date.

7 And I'd like to ask the staff -- I see a
8 number of time periods in here that involve the
9 interaction with Western, and I presume that's the
10 reason for the 60 days -- if you were not
11 preparing a joint document how much time would be
12 required after the FDOC to issue the FSA?

13 MS. DAVIS: Forty days.

14 MR. WHEATLAND: If I could ask,
15 yesterday in the Russell City proceeding staff
16 indicated that they needed 30 days after the FDOC
17 to prepare their final document. What's the
18 reason for 40 days rather than 30? Thirty is the
19 standard timeframe that the Commission has used in
20 past proceedings.

21 MS. DAVIS: Every case is different.
22 And in this case there are maybe substantial
23 changes between the PDOC and the FDOC. There's
24 issues associated with air quality. And we can't
25 be confident of what's going to be in the FDOC.

1 And so we feel that it's prudent to allow staff at
2 least two weeks to complete their analysis once
3 the FDOC comes through.

4 And after that, the review loops are as
5 tight as they can be. We could not commit to any
6 lesser number of days.

7 MR. SMITH: If I might ask a question in
8 that regard. Let's assume the FDOC comes in on
9 the 28th. You've said that the 10th, June 10th is
10 a valid date for completing, getting all the
11 sections to Western for their review. You will
12 have completed all the FSA sections and delivered
13 them to Western for review.

14 And then Western has said that the 18th
15 is a valid date to complete their review of all
16 the FSA sections.

17 MS. DAVIS: Right, that is the first, I
18 guess the first round of review.

19 MR. SMITH: Correct. Where I'm a little
20 lost then is coming down under the EA scenario,
21 let's see, it would be line 12, there a month
22 passes where the CEC completes its preprint FSA.

23 Why a month? If you've already --
24 you've completed the FSA sections and submitted
25 them to Western and they've reviewed it such that

1 they're satisfied the analysis is complete, and
2 they've made a determination based on those
3 sections, what is involved in that one month?
4 What is staff doing with the FSA in that one
5 month?

6 MS. DAVIS: We allow for two review
7 loops prior to it going to the headquarters.

8 MR. SORNBORGER: Actually the regional
9 manager ---

10 MS. DAVIS: The regional manager, for
11 their review. And that's pretty standard when
12 we're issuing a preliminary staff assessment or a
13 final staff assessment. We get the draft analysis
14 from staff and we have to allow for two review
15 loops.

16 Working with Western we've allowed for
17 two weeks in each review loop. That allows for
18 Western to complete their review, Energy
19 Commission to complete their review and then staff
20 to make their revision.

21 And so that's, I guess, two sets of two
22 weeks. Then there is formatting of the document
23 and presenting it as one single document to the
24 regional manager.

25 PRESIDING MEMBER KEESE: I do think we

1 should do everything we can to assist Western to
2 use the EA versus the EIS.

3 MR. WHEATLAND: Well, see, I'm looking
4 at the idea of a schedule that works something
5 like this. Assuming staff needed 40 days, or out
6 of the 23 subject areas that 40 days could start
7 today.

8 So 40 days from now they would have a
9 complete document, except for the areas of air
10 quality, biology and perhaps this issue of visual
11 plume.

12 And what we'd encourage the staff and
13 Western to do, as they have done in numerous
14 proceedings over the years, is to accelerate the
15 review of those three sections, to do it in a
16 faster time.

17 PRESIDING MEMBER KEESE: I think they
18 said they're going to have it within ten days, is
19 what I heard. Ten days of the PDOC, which means
20 they're going to have most of the work done ahead
21 of time.

22 MR. WHEATLAND: Well, they're saying
23 they're going to do the writeup in ten working
24 days, that's actually two weeks after the FDOC.
25 And then they're going to take another additional

1 50 calendar days to --

2 PRESIDING MEMBER KEESE: For the review
3 period.

4 MR. WHEATLAND: -- to format the rest of
5 the document. And if they have --

6 PRESIDING MEMBER KEESE: For a couple
7 cycles of review, though, also.

8 MR. WHEATLAND: Right, with multiple
9 cycles of review. But those multiple cycles of
10 review for 20 of the 23 subject areas could begin
11 today.

12 MS. DeCARLO: If I can make a quick
13 comment. I'm sorry to interrupt. That's a little
14 of an oversimplification. The determinations made
15 in the three subject areas may impact
16 determinations made in other issue areas.

17 Air quality impacts public health; the
18 determination of a potential fogging of the plumes
19 may impact traffic and transportation. So to say
20 that it's limited to just those three areas, and
21 that all the others can proceed at this moment is
22 inaccurate.

23 MR. WHEATLAND: But that's exactly --

24 PRESIDING MEMBER KEESE: And, Mr.
25 Wheatland, they're suggesting that they need --

1 when they start their review cycles they need the
2 whole document. They can't send portions out for
3 the review cycles.

4 MR. WHEATLAND: Right. I --

5 PRESIDING MEMBER KEESE: Which is
6 understandable. I mean I --

7 MR. WHEATLAND: I do hear them saying
8 that, but this exact same dialogue has happened in
9 other cases, and that hasn't been the case.

10 It's important to stress in the Sutter
11 case that involved a joint FSA and EIS, they
12 issued the FSA in all areas except air quality
13 before the FDOC. And --

14 MS. DAVIS: That's not correct.

15 MS. DeCARLO: I believe in Sutter the
16 EIS was separated from the FSA at the last moment
17 because EPA wasn't comfortable going forward with
18 a joint document --

19 MR. WHEATLAND: And they did their --

20 MS. DeCARLO: -- format.

21 MR. WHEATLAND: What they did was
22 Western did their final certification shortly
23 after the FSA came out, which is fine with us.
24 But the last of the FSA came out just seven days
25 after the FDOC. And so we had a lag of seven days

1 from the FDOC rather than a lag of 60.

2 In the Blythe case there was a joint
3 FSA-EA. And again it was bifurcated in that same
4 way. The bulk of the FSA came out early, and the
5 final air quality supplement came out just 19
6 days.

7 I mean, so there's -- actually it wasn't
8 bifurcated. What they did was they did what I
9 suggested, which is they did all the work up front
10 before the FDOC so that they just had to fine-tune
11 and finish the document after they had the FDOC.

12 So in that case it was a combined
13 document. In Blythe it was a combined document,
14 but it came out 19 days after the FDOC was issued
15 because all of their homework had been done in
16 advance.

17 MR. SORNBORGER: I need to address that
18 Blythe issue.

19 HEARING OFFICER WILLIAMS: Sure.

20 MR. SORNBORGER: To be honest with you
21 it's a little embarrassing. I have a little
22 prepared statement for Blythe.

23 Based on an EA prepared for the Blythe
24 Energy project Western determined that there was
25 not a need to prepare an EIS and issued a finding

1 of no significant impact.

2 For Blythe the FSA was issued November
3 13, 2000. However, Western's administrative
4 approval of the final EA was not granted until
5 December 21st. We didn't have approval to go
6 forward with an EA on November 13th. We didn't
7 get that approval until December 21st, just prior
8 to the release of the FONSI.

9 Per DOE policy, DOE order 451.1(b) the
10 final EA should have been approved by Western
11 before issuance. The review schedule developed
12 with the CEC Staff for the East Altamont Energy
13 Center was intended, in part, to help insure
14 Western's NEPA administrative procedures are met.

15 The CEC and Western review process are
16 distinct, and Western needs to insure that the
17 administrative procedures are met with or without
18 the issuance of a joint document.

19 In a nutshell, what that means is we
20 went forward with our determination before we had
21 the approval to do it on Blythe. So I don't know
22 if Blythe is actually a good example for the
23 schedule on that.

24 MR. WHEATLAND: Let me step back for a
25 minute and just share with you what's motivating

1 my concern so you understand the underlying
2 concern.

3 I appreciate that everyone here is doing
4 the best they can to move this case forward as
5 quickly as possible. And there have been some
6 unfortunate delays in this case outside the
7 control of this Commission and the applicant. The
8 most significant of which is the delay in the
9 issuance of the PDOC.

10 But what we're faced with now is that
11 we're about ten and a half months into our 12-
12 month AFC process. And this applicant has a very
13 strong interest in trying to obtain a decision
14 from the Commission that will allow it to begin
15 construction for the summer of 2005.

16 In addition, as you may know, Calpine
17 has entered into agreement with the State of
18 California that amends certain power purchase
19 contracts. And one of the conditions of those
20 contracts is that Calpine obtain a license from
21 this Commission prior to November 30th of this
22 year. That's a condition of the agreement with
23 the State of California.

24 But November 30th is not going to be
25 good enough for us if we want to make the summer

1 of 2005 due to the requirements of financing and
2 preconstruction activities that necessarily must
3 be undertaken, we need a decision earlier than
4 that.

5 And if the final staff assessment is
6 issued by July 25th or later, the Commission's not
7 going to be able to reach a final decision in time
8 to allow us to make the summer of 2005.

9 So what we're asking the staff and
10 Western and the Committee to do is to work with us
11 to try to accelerate the efforts to try to get a
12 final decision. Not to use the standard 30-day
13 FSA period that normally follows the FDOC, but to
14 even accelerate that a bit and to find a way that
15 we can get a timely decision in this case.

16 PRESIDING MEMBER KEESE: Okay, well, I
17 think certainly the Committee will do everything
18 in its power to get moving forward. I think I
19 have heard from Western and the staff that they
20 are already reviewing sections ahead. They're not
21 waiting. They're already reviewing them. So I
22 think the best we can do is just ask everybody to
23 keep moving forward as fast as we can on this
24 project.

25 We'll do it as expeditiously as we can.

1 And some things can be shortened more easily than
2 others. Anytime you're in a joint process, one
3 that is more difficult to expedite that phase of
4 it. But as we have come to agreement on issues,
5 it should simplify the hearing process later on.
6 And it should simplify the writing of the
7 Presiding Member's Proposed Decision.

8 MR. WHEATLAND: Since we're here to try
9 to find a compromise, could I just make one last
10 try at talking about a possible compromise?

11 PRESIDING MEMBER KEESE: Throw something
12 out, the Committee's going to take it under
13 consideration here.

14 MR. WHEATLAND: I know, if I could I
15 just want to put all options on the table so we
16 can think about them.

17 Because what I heard Western and the
18 staff saying is that they have a preference for a
19 joint document. But a joint document, if it can't
20 be bifurcated, and if it has to be 60 days, is
21 going to pose a very significant delay.

22 And what I would ask you to consider is
23 the idea of splitting off the environmental
24 assessment from the FSA to allow the FSA to come
25 out earlier. And if May 28th is the date for the

1 FDOC or whatever that might be, we'd strongly
2 suggest setting a date for the FSA no more than 30
3 days after the FDOC.

4 That's the same schedule that we agreed
5 to yesterday in Russell City. And I'm sure that
6 the staff that's working on East Altamont is
7 equally capable as the staff in Russell City. But
8 the compromise we'd offer is the FSA, standing
9 alone, 30 days after the FDOC. And then if the
10 environmental assessment is subsequently issued,
11 it still can be done so in a way not to delay this
12 proceeding.

13 That would allow us, assuming that FDOC
14 comes out on time, which we're going to be working
15 very hard to do, would allow us to have a final
16 decision in time for the summer of 2005.

17 MS. DeCARLO: If I could just make some
18 points on that issue. I have concerns about
19 separating the two documents, which are now one.

20 One is that we've never done it before.
21 We've never, of our own volition, decided to
22 separate the NEPA document from the CEQA one.
23 There's a lot of public interest in this project,
24 and requiring the public to go through two
25 separate public comment periods, two separate

1 processes to try and follow the project is, I
2 think, should be avoided at all costs in the
3 interests of the public.

4 Additionally, I would be concerned about
5 what the final NEPA document looked like. If it
6 might affect our ultimate decision, the conditions
7 that we would require, I would prefer that all
8 those possibilities be contained in the one
9 document. I think it would be a lot simpler and
10 result in a lot more stable decision.

11 MR. WHEATLAND: Well, let me make one
12 more shot, because what I'm not hearing is
13 compromise.

14 PRESIDING MEMBER KEESE: But I do think
15 you would prefer not having -- you would prefer
16 that when the documents come out that they're
17 consistent.

18 MR. WHEATLAND: The inconsistency
19 wouldn't trouble us. What will trouble us is no
20 decision in time to build the plant in the summer
21 of 2005.

22 Could I -- let me just make a
23 suggestion. This is something that I've discussed
24 with Western, as well. If there's anything the
25 staff can do to find a reasonable way to

1 accelerate that 60 days, that's going to be
2 tremendous.

3 Let me give you a suggestion here.
4 There's a period of time you'll see after the
5 Western decides that the EIS is necessary, where
6 Western's comments come back to --

7 HEARING OFFICER WILLIAMS: What line
8 number are you at?

9 MR. WHEATLAND: I'm on line 10 now.
10 Western's submitted all its comments on the FSA
11 draft. And there's six working days for the staff
12 to integrate Western's comments and send them back
13 to Western.

14 And then there's another five days for
15 Western to complete the review of the preliminary
16 final staff assessment and send it back to the
17 staff. And there's another seven days for the
18 staff then to complete the preprint FSA by
19 incorporating the comments that come from Western.

20 So there's a total here, just in that,
21 of 18 working days, one month, to have that
22 interaction. And as I mentioned before to
23 Western, I've been involved in the preparation of
24 environmental documents that require interagency
25 coordination, and what we've done is we've brought

1 all the affected parties together in one room for
2 one or two days and thrashed out the differences.
3 Rather than passing the paper back and forth for a
4 month, we brought everybody together.

5 If the staff could accelerate that part
6 of the schedule, reducing those 18 days to three
7 days, that alone would save three weeks. And
8 there may be other opportunities in this schedule,
9 as well.

10 What we're asking for is not the
11 standard administrative schedule of a very
12 leisurely one, but one where people are really
13 making an effort to realize that there is a
14 statutory deadline to this case.

15 MS. DeCARLO: And we are fully intending
16 to make that effort in every way possible. We're
17 trying to review these issues as quickly as
18 possible. Get them through the review cycle.

19 This is just what we feel like we would
20 absolutely need to thoroughly review. There may
21 be flexibility within there and we will fully take
22 advantage of trying to conduct this as we go
23 along.

24 And if I could just make one more point,
25 and I'm not trying to tell the applicant their

1 time schedule, but I notice in the AFC it
2 indicated that you only needed two years from date
3 of certification to operation. And so I would
4 just like to make that point.

5 And in our proposed schedule that two
6 years, if construction only took two years, then
7 you should be able to meet the summer of 2005
8 date.

9 MR. WHEATLAND: Well, that's a very
10 important point, actually. If I could, please,
11 because it is an important point, and because the
12 world has changed in the last ten and a half
13 months since we filed the application, could I ask
14 Ms. Torre to briefly address that issue of the
15 timeframe between a final decision and starting
16 construction?

17 HEARING OFFICER WILLIAMS: Sure.

18 MS. TORRE: Our construction period from
19 groundbreaking to commercial operation has always
20 been 26 to 27 months, which we perhaps speak of
21 roughly as two years. It's always been slightly
22 longer than that.

23 In the current economic environment, and
24 with the current energy prices in California, it's
25 not possible to start groundbreaking on a project

1 without having raised project financing for the
2 project. And the financing needs to be in place
3 before groundbreaking.

4 That is a lengthy process, and you can't
5 even start it until after your permits are in
6 hand. There are significant pieces of engineering
7 work that need to be undertaken to actually
8 complement, to go along, to get certain documents
9 in place for the review by the lender.

10 And I don't think there's any company
11 coming before you that would be likely to start
12 groundbreaking on a project without going through
13 its lending process.

14 And that is a change from what Calpine
15 was putting forward to you when we were attempting
16 so hard to meet the June '04 date. That was a
17 different economic environment in the country at
18 large, and in the energy sector, as well. And
19 it's simply not possible at this point.

20 PRESIDING MEMBER KEESE: That would
21 reflect everything I receive on virtually a daily
22 basis suggesting the status of construction of
23 power plants in the State of California.

24 So, I acknowledge that financing is now
25 the key component of construction dates.

1 MS. TORRE: We are looking at an eight-
2 month period from when the permit is received to
3 when financing will be in place. That's, of
4 course, an estimate. But what that would mean is
5 that that work needs to be undertaken starting in
6 September in order even to be online by July 1st.
7 That you would probably still not be able to be
8 online by June 1st.

9 And it will be extremely hard --

10 PRESIDING MEMBER KEESE: Well, I think
11 you've done an excellent job of explaining your
12 point, and I think that I've heard from the other
13 side of the table a willingness to do everything
14 possible to expedite.

15 The Committee will certainly take all
16 this in consideration as we put together as much
17 of the schedule as we can put together at this
18 time. And we'll just keep moving as fast as we
19 can.

20 MR. SORNBORGER: Can I just say one more
21 thing on the schedule?

22 PRESIDING MEMBER KEESE: Certainly.

23 MR. SORNBORGER: I should have mentioned
24 this earlier, also. Although Western would, you
25 know, prefer to stick with the joint process,

1 whatever date comes out, if you decide to split,
2 whatever date comes out as the PMPD, that will
3 also be the date that we will shoot to have our
4 finding of no significant impact such that
5 Western's schedule and the CEC schedules still
6 come together.

7 I just wanted to make sure that we're in
8 support of those dates.

9 PRESIDING MEMBER KEESE: Okay. Mr.
10 Wheatland.

11 MR. WHEATLAND: I'd like to ask two
12 things very briefly, please. And I apologize for
13 prolonging this.

14 But one is I'd like to ask that perhaps
15 the Committee would request of the staff an
16 accelerated schedule for joint preparation of the
17 FSA-EA. In other words, assuming that the
18 management of the Commission Staff and Western
19 were committed to putting the resources necessary
20 to accelerate the schedule, assuming this assumes
21 just standard resources, what could they do if
22 they really made a special effort in this case?

23 Just --

24 PRESIDING MEMBER KEESE: Pull everybody
25 off Russell City and move to East Altamont, how's

1 that?

2 MR. WHEATLAND: Yes, that would be
3 great. Well, yeah, we would stipulate to
4 relocation of that plant --

5 (Laughter.)

6 MS. DeCARLO: I'm glad the Committee
7 understands the constraints that staff is under.
8 Multiple, multiple projects.

9 PRESIDING MEMBER KEESE: The Committee
10 particularly understands when the Committee's got
11 three that are in exactly the same time schedule.

12 MR. WHEATLAND: And Ms. Torre would like
13 to add one additional, thank you.

14 MS. TORRE: Thank you. I just wanted to
15 speak to the issue of whether the two are joint or
16 not, from the business perspective, for a moment.

17 When we were first before you we were
18 looking at starting groundbreaking right after
19 permit receipt, so having the two of those
20 immediately hand-in-hand was critical.

21 Now I'm hearing from Kirk, you know,
22 their commitment to if the two documents were
23 separate documents, nonetheless getting the FONSI
24 issued around the time of the PMPD, but I am, as a
25 businessperson, not concerned, you know, if those

1 slip slightly apart because I'm looking at this
2 eight-month period for getting the engineering
3 documents prepared that are required for the
4 financing, and closing financing. And that wasn't
5 true before.

6 We actually, in meetings with Western
7 way back in the beginning, did talk about a lot of
8 different approaches and how it could be done.
9 And there were business reasons from our end for
10 wanting them to be linked in one process.

11 You know, as you've said, the Sutter
12 case, although many of the public hearings, many
13 of the workshops were held together, indeed in the
14 end the final documents were separate. And so a
15 great deal of the public process and the
16 workshops, all those things, you know, were joint,
17 but the documents, themselves, were different.

18 That seems to offer, you know, real
19 possibilities for meeting everybody's needs and
20 not overworking staff with this, you know, extra
21 coordination time.

22 So, that's really what Calpine would
23 love to see, if at all possible.

24 PRESIDING MEMBER KEESE: Thank you.

25 MR. WHEATLAND: Thank you.

1 PRESIDING MEMBER KEESE: Any other
2 comments from people in the audience? Any
3 comments from people on the phone?

4 MR. BOYD: About the schedule?

5 HEARING OFFICER WILLIAMS: Who's
6 speaking?

7 MR. BOYD: This is Mike Boyd of CARE.

8 PRESIDING MEMBER KEESE: Well, I guess
9 on the schedule, at this point.

10 MR. BOYD: I have a quick question
11 (inaudible) biological opinion? Is there a
12 biological opinion --

13 PRESIDING MEMBER KEESE: Mr. Boyd, we're
14 really not hearing you.

15 MR. BOYD: Okay.

16 PRESIDING MEMBER KEESE: At least we're
17 not understanding what you're saying.

18 MR. BOYD: Okay, (inaudible). Can you
19 hear me better now?

20 PRESIDING MEMBER KEESE: Yes.

21 MR. BOYD: Okay. My question is is
22 there a biological opinion yet?

23 MR. SORNBORGER: A biological opinion
24 has not been issued yet, no.

25 PRESIDING MEMBER KEESE: No, it has not

1 been issued yet.

2 MR. BOYD: Do you have any anticipated
3 date for that document?

4 PRESIDING MEMBER KEESE: Yes, we do.

5 MR. SORNBORGER: The date is going to be
6 in part dependent upon the outcome of the
7 mitigation area. Settlement issue --

8 PRESIDING MEMBER KEESE: Yeah, we did go
9 through this at the beginning of this conference.

10 MR. BOYD: Okay.

11 PRESIDING MEMBER KEESE: There is going
12 to be a mitigation plan proposed within the next
13 week.

14 MR. BOYD: Okay. Oh, okay, so it's in
15 the --

16 PRESIDING MEMBER KEESE: It follows
17 that.

18 MR. SORNBORGER: Based on what was
19 given, the biological opinion has 135 days to be
20 issued from the date it's received from the U.S.
21 Fish and Wildlife Service.

22 MR. BOYD: Okay.

23 MR. SORNBORGER: But to make any matter
24 that you need to know what the date that was at,
25 that was when it was submitted. I don't recall

1 the date it was submitted. I can get that
2 information to you this afternoon if the
3 Commissioners would like that.

4 MR. BOYD: Okay.

5 PRESIDING MEMBER KEESE: Thank you.

6 MR. SORNBORGER: Do you know that off
7 the top of your head, Susan?

8 MS. STRACHAN: It was early February,
9 like February 10th, 12th, something like that.

10 MR. SORNBORGER: And then from that
11 first date they have 30 days to tell us if
12 everything is in order. They have told me that
13 everything is in order. So now we go on to the
14 135 days is when it's supposed to be issued. And
15 they're seeing no problems with that date, with
16 the caveat of this mitigation area thing.

17 MR. BOYD: Okay, okay. I just think
18 that -- that answers my question. So I didn't
19 really have to try to figure out why (inaudible).

20 PRESIDING MEMBER KEESE: Thank you. Do
21 we have any final comments by anybody?

22 MR. BOYD: I would like to make a
23 comment if that's okay --

24 HEARING OFFICER WILLIAMS: Go ahead,
25 Mr. Boyd.

1 PRESIDING MEMBER KEESE: Just briefly.

2 MR. BOYD: I just recently got a copy of
3 the new contract, the Governor's, that says that
4 the -- Calpine --

5 HEARING OFFICER WILLIAMS: Mr. Boyd,
6 could you get closer to the mike, maybe? We're
7 having a hard time hearing you.

8 MR. BOYD: Okay, do you hear me now?

9 HEARING OFFICER WILLIAMS: Yeah, that's
10 better.

11 MR. BOYD: Okay. What I was saying was
12 I recently received copies of the voluntary
13 contract that Calpine has -- and my concern in
14 here is that those contracts are calling for this
15 project to be approved and developed. And what
16 I'd like to stress here is that there's a
17 (inaudible) for this project -- and so my -- is
18 that Calpine may (inaudible) Enron, that Calpine
19 is inflating their stock values --

20 PRESIDING MEMBER KEESE: Mr. Boyd,
21 that's irrelevant to what we're doing here.

22 MR. BOYD: Well, I'm just trying to make
23 it relevant, if that's the case. What I'm asking,
24 especially (inaudible) in light of the recent
25 Enron -- investigation going on by the FERC on

1 whether or not (inaudible). If there's a question
2 of whether or not they're going to be able to get
3 financing, why are we spending so much taxpayers'
4 money --

5 PRESIDING MEMBER KEESE: That is not
6 going to be a consideration of ours. If an
7 applicant is prepared to spend the significant
8 resources to get a plant licensed, we're prepared
9 to spend the time and significant resources to
10 evaluate it.

11 MR. BOYD: Okay, thank you.

12 PRESIDING MEMBER KEESE: Thank you.

13 MR. BOYD: That's all my comments are.
14 Thank you.

15 PRESIDING MEMBER KEESE: Thank you. Do
16 you have a final comment?

17 MR. SARVEY: Yeah, I have a couple
18 comments on public services, and --

19 PRESIDING MEMBER KEESE: Sure.

20 MR. SARVEY: -- I don't know if they're
21 appropriate at this time, but --

22 PRESIDING MEMBER KEESE: Well, let's try
23 it.

24 MR. SARVEY: -- there seems to be a
25 small turf war between Alameda County and San

1 Joaquin County over the issues of law enforcement,
2 fire protection.

3 And Alameda County proposes a response
4 time for law enforcement of 40 minutes to the site
5 in East Altamont, which, as a resident of the
6 area, I feel that's inadequate.

7 And Baxter Dunne, our County Sheriff,
8 would like to have some sort of discussion on that
9 matter re duties for officers in that area.

10 And in response to the fire protection
11 issue they plan on responding to a fire from
12 Livermore, which is 20 to 25 minutes away. And
13 there's considerable congestion on the freeway at
14 many times, which would require the use of a back
15 route. And the hazmat response is going to come
16 from Castro Valley, which is like 50 minutes away.

17 And we're concerned about those issues.
18 And we'd like to have the Committee maybe prompt
19 or help that discussion along, because there
20 doesn't seem to be anything happening in that
21 area. And we are --

22 PRESIDING MEMBER KEESE: Well, those are
23 issues that will be dealt with, but those are
24 issues, since I don't generally deal with them
25 till they come up, that I'm just totally

1 unfamiliar with.

2 MR. SARVEY: I have some background
3 information for you if that would be helpful.

4 PRESIDING MEMBER KEESE: I think it
5 would be -- I think what we'll do, my plan will be
6 just terminate this and if you want to talk with
7 either the staff or the applicant about that?

8 MR. SARVEY: Sure.

9 PRESIDING MEMBER KEESE: I mean it will
10 come up later as we go through the process. So,
11 you bring it up with them now --

12 MR. SARVEY: I just didn't want it to
13 come up later and have litigation ensue and then
14 have problems --

15 PRESIDING MEMBER KEESE: That's just
16 fine. I'm sure that they --

17 MR. SARVEY: -- with the schedule,
18 itself for Calpine and the CEC.

19 HEARING OFFICER WILLIAMS: Yeah, I would
20 encourage you to --

21 PRESIDING MEMBER KEESE: -- want to
22 ask --

23 HEARING OFFICER WILLIAMS: -- engage
24 those staff --

25 PRESIDING MEMBER KEESE: -- we did one

1 last night in which every issue had been resolved
2 before we got to hearing. It's going to be a
3 wonderful hearing because it's going to be all by
4 stipulation.

5 The more issues that can be solved in
6 that manner, the better. So, have a chat with
7 them here.

8 MR. SARVEY: Okay, thank you.

9 PRESIDING MEMBER KEESE: Informally.
10 Thank you. If nothing else before us, this
11 conference is adjourned.

12 (Whereupon, at 12:15 p.m., the
13 scheduling conference was concluded.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Scheduling Conference; that it
was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
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